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THE FIRST FRENCH REPUBLIC:

A STUDY OF THE ORIGIN AND THE CONTENTS OF THE DECLARATION
OF THE RIGHTS OF MAN, OF THE CONSTITUTION, AND OF
THE ADOPTION OF THE REPUBLICAN FORM OF
GOVERNMENT IN 1792.

BY

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PREFACE.

THE present study is one of origins. Our object is to trace from the beginning the gradual development of the Declaration of the Rights of Man, of the first written constitution in France, and to follow the movement which led to the abolition of monarchy and to the adoption of the republican form of government. In view of the complex phenomena of the French Revolutionary period, it is advantageous to our understanding of that surpassingly interesting era to view the various classes of facts from different standpoints. The Revolution was social, religious, political, and economic. While the study of any one of these phases necessarily involves the others, the best results will be secured by considering the movement now as social, now as religious, now as political, and now as economic. This paper is an investigation of the early Revolution from the political point of view. Whence arose in the minds of the French the idea of a Declaration of the Rights of Man? Where did they derive the principles therein contained? How were they led to feel the need of a written constitution? Through what series of events were they brought to suspect, to denounce and to renounce royalty, and to accept the idea of an elective executive? Such questions as these are of interest to the student of political history.

Though the primary sources for the investigation of this subject are limited in our American libraries, enough has been found to lead to an interpretation suggestive and, we believe, correct.

Recently two important books upon the French Revolution have appeared. M. A. Aulard published last year his *Histoire politique de la Révolution française*. In this work he has re-examined, in the light of the voluminous material at hand in France, these same questions. Prof. William M. Sloane, of Columbia University, has treated the Revolution primarily in its ecclesiastical aspects in his *French Revolution and Religious Reform*. The manuscript of this thesis was practically completed

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before either of these works came into the writer's hands. It did not seem advisable, therefore, to make any modifications in the conclusions herein reached ; they are, however, in the main in accord with those arrived at by these two authors. The Declaration of the Rights of Man and the origin of the idea of a written constitution are here more fully discussed than by these writers.

H. M. C.

SHEFFIELD, PA., *August 5, 1902.*

THE DECLARATION OF THE RIGHTS OF MAN.

THE first question that naturally suggests itself in studying the Declaration of the Rights of Man is, whence did the French derive the idea of such an instrument? It has been asserted, and an attempt has been made to prove, that both the notion of such a Declaration and its content were borrowed from the early American State Constitutions.¹ This question, however, really resolves itself into a double inquiry, *i. e.*, whence did the French receive their notion of the guaranty of individual rights against governmental intrusion, and how far did the ideas contained in the Declaration of the Rights of Man represent the political traditions and current thought of France? Only a study of the abuses and of the political theories of pre-revolutionary France and of the facts relative to this document, as they are revealed in the writings of contemporaries and in the records of the Constituent Assembly, can at all satisfactorily answer these inquiries.

The sympathetic relation between France and the colonies during and after the American Revolution, the interest in America of some of the more radical French political theorists, such as Mably and Condorcet, and the community of ideas existing between the two countries, shown by the Jeffersonian school in America, and by the publication of American writings in France, are facts well known. Hence it may be inferred that, when a few of the *cahiers* asked for a Declaration, their framers were acquainted with and influenced by the American Bills of Rights.²

¹ Ritchie, *Natural Rights*, p. 1; M. Charles Borgeaud, *Établissement et Revision des Constitutions en Amérique et en Europe*, 240-242; Dr. Geo. Jellinek, *Die Erklärung der Menschen-und Bürgerrechte*, p. 10.

² Two requests for a Declaration of the Rights of Man came from Paris, *intra muros*; one from the Nobility, *Archives parlementaires*, v, 271; the other from the Third Estate, *Ibid.*, v, 281. The latter cahier contains a formulated Declaration of thirteen articles. The general cahier of Rennes, *Arch. Parl.*, v, 538, that of the Third Estate of Annonay, *Arch. Parl.*, ii, 50, and that of the Third Estate of Nemours, *Arch. Parl.*, iv, 161, ask for the Declaration of Rights.

But not until the States General had assumed the rôle of a Constitutional Convention were the proposals of Declarations numerous. Then it was that the Frenchmen gave abundant proof of their fondness for formulating political documents.

On July 9, 1789, M. Mounier, who had been charged by the Constituent Assembly with the preparation of a scheme for a constitution, presented a report in behalf of the committee, the first article of which reads: "Tout gouvernement doit avoir pour unique but le maintien des droits des hommes; d'où il suit que pour rappeler constamment le gouvernement au but proposé, la constitution doit commencer par la déclaration des droits naturels et imprescriptibles de l'homme."¹ July 11, Lafayette proposed the form of a Declaration of Rights, containing twelve articles, and pointed out the advantages of such an instrument.² M. Lally Tollendal approved this project, but argued that it was dangerous to adopt any such articles separate from the Constitution; he at the same time called the attention of the Assembly to the great difference between a new-born colonial people, who were breaking with a distant government, and an old nation extending over an immense territory, one of the first nations of the world, which for eight centuries had obeyed the same dynasty and had cherished the royal power when it had been tempered by custom. This nation, he said, will idolize this power when it shall be regulated by laws.³ M. Lally Tollendal certainly believed that they were following the American example.

July 14, Lafayette's motion was discussed. Some thought the Declaration should be put at the head of the Constitution, in order permanently to secure the rights of man before establishing those of society; others thought it should be placed after the Constitution. It was decided at this session that the Constitution should contain a Declaration, but its position was left for later decision.⁴ Siéyès read his exposition of the Rights of Man, on July 10, to the Constitutional Committee, and on July 21, to the Assembly.⁵ On July 17, M. Target presented a scheme of thirty-one articles for a Declaration, and M. Mounier one of sixteen

¹ *Arch. Parl.*, viii, 216.

² *Ibid.*, 221 *et seq.*

⁴ *Ibid.*, 230-231.

³ *Ibid.*, 221-222.

⁵ *Ibid.*

articles.¹ On July 31, M. D. Servan, advocate to the Parlement of Grenoble, presented a project of thirteen articles. August 1, a long debate occurred upon the position to be given to the Declaration in the Constitution. M. Thouret also offered a scheme for a Declaration. The debate continued. On August 4, M. Camus proposed that the Assembly make a declaration of the rights and duties of man and of a citizen; but this motion was defeated by a vote of 570 to 433.² However, at the same session, it was decided almost unanimously that the Constitution should be preceded by the Declaration. On August 12, Abbé Siéyès offered a project of a Declaration of forty-two articles.³

During discussion in the Assembly, August 1, M. Champion de Cicé, Bishop of Auxerre, opposed a declaration as useless at that time, and said that the example of North America was not conclusive, as that country only contains proprietors, cultivators, and citizens all on the same social footing. M. De la Luzerne, Bishop of Langres, also asserted that the Constitution of an empire did not need a Declaration. M. Malouet, in making strong protest against their placing the Declaration at the head of the Constitution, portrayed the contrast between the situation of France and that of America.⁴ M. Delandine spoke in agreement with M. Malouet.

On August 12, two projects for a Declaration of Rights were offered to the Assembly: one of seventy-one articles, by Gonges-Carton of Quercy, and one of twenty-four articles, by the Sixth

¹ *Arch. Parl.*, 341.

² *Ibid.*, 422.

³ "Convertissons nous en acte législatif cet exposé métaphysique, ou présenterons nous les principes avec leur modification dans la constitution que nous allons faire? Je sais que les Américains n'ont pas pris cette précaution; ils ont pris l'homme dans le sein de la nature, et le présentent à l'univers dans sa souveraineté primitive, mais la société Américaine nouvellement formée, est composée, en totalité de propriétaires déjà accoutumés à l'égalité, étrangers au luxe ainsi qu'à l'indulgence, connaissant à peine le joug des impôts, des préjugés qui nous dominent, n'ayant trouvé sur la terre qu'ils cultivent aucune trace de féodalité. De tels hommes étaient sans *doute* préparés à recevoir la liberté dans toute son énergie; car leurs goûts, leurs moeurs, leur position les appelaient à la démocratie. Mais, nous, Messieurs, nous avons pour concitoyens une multitude immense d'hommes sans propriétés, qui attendent, avant toute chose, leur subsistance d'un travail assuré, d'une police exacte, d'une protection continue, qui s'irritent quelquefois, non sans de justes motifs, du spectacle du luxe et de l'opulence," etc. *Arch. Parl.*, viii, 322.

Bureau of the Assembly. On August 13, a committee of five, consisting of Desmeuniers, Bishop of Langres, M. Tronchet, Count Mirabeau and M. Rhédon, was chosen to receive the drafts of a Constitution and to recast these into one form.¹ August 14, Mirabeau, on behalf of the committee, reported a scheme of a Declaration containing nineteen articles. In speaking of the aim of the committee, he said, that from the score of plans offered them, they had sought, like the Americans, to construct a Declaration not of abstract and scientific principles, but one of political truths that would readily be comprehended by the popular mind.² In the debate of August 18 upon the Declaration, M. Rabaud de Saint Etienne said that the Declaration of Rights had been adopted because the *cahiers* had asked it, and that the *cahiers* had asked it because the Americans had set the example, but that this was no reason why the Declarations should be similar, for the circumstances of the two nations were different.³

August 19, the Assembly decided to discuss first the Declaration of the Sixth Bureau.⁴ On August 21, after some debate, the Assembly adopted the preamble of the plan, somewhat modified, presented by the committee of five. M. Mounier then proposed three articles, which were adopted. August 21, on the proposal of M. Alexander de Lameth, articles four, five, and six, after discussion, were adopted.

August 21, M. de Boislander proposed a plan of seventy-four articles. August 22, after divers proposals had been made and

¹ *Arch. Parl.*, viii, 434.

² "Nous avons cherché cette forme populaire qui rappelle au peuple, non ce qu'on a étudié dans les livres ou dans les méditations abstraites, mais ce qu'il a lui-même éprouvé. . . . C'est ainsi que les Américains ont fait leur déclaration de droits; ils en ont à dessein écarté la science; ils ont présenté les vérités politiques qu'ils s'agissait de fixer sous une forme qui pût devenir facilement celle du peuple, à qui seul la liberté importe, et qui seul peut la maintenir." *Arch. Parl.*, viii, 438-440.

³ *Arch. Parl.*, viii, 452 *et seq.*

⁴ A comparison of the Declaration offered by the Sixth Bureau with the Bill of Rights of the Revolutionary Constitutions of Massachusetts and of Virginia, shows that the Bill of Rights of the Virginia Constitution contained sixteen articles, that of the Massachusetts thirty, and that of the Sixth Bureau, twenty-four. The same general ideas are found in all three, but they are couched in different words, that of the Sixth Bureau being the least extreme.

discussed, articles seven, eight, and nine were adopted.¹ August 23, after many proposals and lengthy debate, article ten was agreed upon. August 24, a liberal discussion of the phraseology resulted in the adoption of articles eleven, twelve, and thirteen.² August 26, after some discussion, articles fourteen and fifteen were accepted; later in the same day, articles sixteen and seventeen were agreed upon.³ Then the Assembly resolved that the consideration of further articles should be postponed until the Constitution should be completed.⁴ October 2, the articles previously adopted were presented to the Assembly, with article four changed from "La liberté consiste à faire tout ce qui ne nuit pas à autrui," to "La liberté consiste à pouvoir faire tout" etc. The change was accepted. The whole Constitution was presented to the king September 13, 1791, and accepted by him. In the Assembly, September 14, the king swore to obey the constitution.⁵

These are the facts of historical data relating to the formation of the Declaration of the Rights of Man purposely set forth in detail and in chronological order. What conclusions may we draw from them? The frequent reference to the American Bill of Rights, the number of Declarations proposed in *cahiers* and before the Assembly, differing in form and in length, but agreeing in fundamental principles, the discussions, the selections and the modifications to which this raw material was subjected in the process of constructing the Declaration finally adopted, warrant these two inferences: (1) the notion of a Declaration of Rights, separate from the Constitution proper, was suggested to the French by the American State Constitutions; (2) the contents of the articles and the language in which they were couched were original.

A study of the separate articles of the Declaration in the light of contemporary conditions gives additional reason for thinking that the ideas therein contained were not foreign to France. For convenience of consideration in the present study, the articles of the Declaration may be divided into two classes: the first class consists of those articles that were in the main reactive against certain abuses under which the French suffered; the second class

¹ *Arch. Parl.*, viii, 470 *et seq.*

² *Ibid.*, 483-484.

³ *Ibia.*, 487, 489.

⁴ *Ibid.*, 492.

⁵ *Histoire Parlementaire*, 395-402.

comprises those articles which contained principles more especially theoretical. Less proof, perhaps, is necessary for deciding upon the originality of the former class than upon that of the latter. We shall treat these classes in the order named.

"Art. 7. No person shall be accused, arrested or imprisoned except in the cases and according to the forms prescribed by law. Any one soliciting, transmitting, executing, or causing to be executed any arbitrary order shall be punished. But any citizen summoned or arrested in virtue of the law shall submit without delay, as resistance constitutes an offense.

Art. 8. The law shall provide for such punishments only as are strictly and obviously necessary, and no one shall suffer punishment except it be legally inflicted in virtue of a law, passed and promulgated before the commission of the offence.

Art. 9. As all persons are held innocent until they shall have been declared guilty, if arrest shall be deemed indispensable, all severity not essential to the securing of the prisoner's person shall be severely repressed by law."

That these three articles were aimed at no imaginary or very distant wrongs is evident from a cursory survey of the administration of the laws of France, and from the protests of French authors. *Lettres de cachet*, arbitrary imprisonments, retroactive laws, and cruelly exaggerated penalties were not uncommon. Mirabeau and Voltaire had both suffered under arbitrary laws and had painted the injustice of such laws in lurid colors. Mirabeau's *Lettres de cachet* and his *Essai sur le despotisme* bristle with protests against the abuses of the old *régime*. The following gruesome picture is a suggestive statement of the way in which justice was administered in France in the eighteenth century:

"The disproportion of crimes and of penalties was flagrant. A house thief was hung in 1733; an ecclesiastic, guilty of having found fault with the expulsion of the Jesuits, was also hung in 1762. The procedure was unjust and inhuman. The accused, assumed to be guilty in advance, ignorant of the crime with which he was charged, without counsellor or advocate, interrogated *à huis clos*, submitted to the preparatory question, was judged secretly. Once condemned, he was tortured before undergoing his punishment. And what punishment! For imprisonment, transportation or hanging was in vogue. The burning at the stake had fallen into desuetude, but the lash, branding with red-

hot iron, the galleys, quartering, the rack, still did their savage work.”¹

Protests against these enormities were raised by the philosophers, and later by enlightened magistrates, such as Montesquieu, Servan, Linguet, and Malesherbes. In 1780, the “preparatory question” was abolished.²

Mirabeau, in denouncing retroactive laws, says: “*Nulle puissance humaine, ni surhumaine ne peut justifier l'effet rétroactif d'aucune loi.*”³

“Art. 10. No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law.”

Since the sixteenth century, France had been wrestling with the problem of how to adjust two hostile faiths to each other. Farther to complicate the matter, a schism occurred in the seventeenth century within the Catholic Church, which aroused between Jesuits and the Jansenists a feeling of intolerance, well-nigh as violent and determined as that which already existed between the Catholics and the Huguenots. Even in the eighteenth century intolerance, held in partial abeyance, frequently broke out in overt acts, which displayed the vindictiveness of the hostile parties. The philosophers, more interested in humanity than in the prejudices of any faction, championed in the name of tolerance the party persecuted. The new spirit gained support. The writings of the latter half of the eighteenth century abound with denunciations of intolerance and with pleas for tolerance.⁴ By and by the movement was fruitful, and on January

¹ *Lavisse et Rambaud; Histoire Générale*, vii, 360.

² *Ibid.*, vii, 360.

³ *Dict. Universelle*, under *Rétroactif*.

⁴ Three friends of tolerance were Voltaire, D'Argenson and Turgot. Voltaire in his *Discourse Historique et Critique* placed as an introduction to the tragedy *Les Guebres* (*Oeuvres*, by M. Beuchet, ix, 26, Paris, 1831), and in his *Traité sur la tolérance*, written upon the death of Jean Calas, 1763 (*Oeuvres*, ix, 141 and 243 *et seq.*), pleads for tolérance. For d'Argenson's views on tolérance in 1744, see Rocquain, *L'esprit révolutionnaire*, 116 and 138, and d'Argenson, *Mémoires*, v, 328 *et seq.* Turgot in a letter to an ecclesiastic, his schoolmate at the Sorbonne, expressed himself in 1753 in favor of tolerance; another letter of the year following was of like import. His *Conciliateur* was printed about the same time. *Oeuvres*, ii, 353 *et seq.*, Paris, 1808. June, 1755, he presented a Memoir to the king on “Toleration, or Religious Equality.” *Life and Writings of Turgot*, by W. Walker Stephens. 256 *et seq.*

19, 1788, the *Parlement* of Paris registered a decree giving civil rights to Protestants.¹

"Art. 11. The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for the abuse of this freedom as shall be defined by law."

Here too is an attempt to secure permanently that for which a long struggle had taken place. Two powers, the Church and Royalty, had labored, now singly and now together, to regulate the expression of ideas. The writing and the writer had been equally the object of royal inclemency—the one being consigned to the flames, the other to prison. But in spite of royal decrees, public sentiment gravitated towards liberty of expression. In 1776, Malesherbes secured the opening of the prisons of Vincennes and the Bastille for the release of prisoners held under *Lettres de cachet*.² Again, in 1784, in response to Mirabeau's "*Lettres de cachet*," the dungeons of Vincennes were opened.³

"Art. 12. The security of the rights of man and of the citizen requires a public *force*. This *force* is, therefore, established for the good of all and not for the personal advantage of those to whom it shall be entrusted."

This twelfth article was at the same time the expression of a political theory and reactionary against past practices. It was the theory of the framers of the Declaration of the Rights of Man that the nation was supreme, the monarch only an hereditary administrative agent. To maintain this status, the power of military force must be employed only for the advantage of the nation. d'Argenson, in 1754, had complained that "Le roi n' emploie plus ses forces que contre ses sujets."⁴ In 1771, when the obstinate *parlement* had been replaced by the *Grand Conseil*, troops were used to guard this substitute which was designated "Maupeou's *parlement*," and the people considered the whole procedure as contrary to the French Constitution.⁵ Mirabeau had also de-

¹ Rocquain, *L'esprit rév.*, p. 463.

² *Ibid.*, 336.

³ Rocquain, *L'esprit, rév.*, 412. For a list of the books condemned, see Rocquain, *Ibid.*, 489-535.

⁴ Quoted in Rocquain, *L'esprit rév.*, 178, and in *Mémoires*, viii, 248.

⁵ Rocquain, *L'esprit rév.*, 286.

nounced the royal army in these plain words: "Je dis que les troupes réglées sont l'instrument du despotisme, comme leur institution en fut le signal. L'exemple de nos voisins n'est pas une preuve contradictoire; et ne voit on pas en effet que toute constitution en Europe est dégénérée en arbitraire et s'accélère vers le despotisme; Les troupes réglées ont été et seront toujours le fléau de la liberté; mais ce fléau est intolérable quand il devient le rempart des dépréciations."¹

The people in several of the *cahiers* manifested fear lest the monarch might endanger, by the use of an army, the national rights, and consequently asked for the dismissal of foreign troops, for a new constitution for the army, and for the destruction of internal forts.²

"Art. 13. A common contribution is essential for the maintenance of the public forces and for the cost of administration. This should be equitably distributed among all the citizens in proportion to their means."

The inequality of taxes was, in France, an abuse recognized and condemned for centuries. Bodin, in his *République*, written in the sixteenth century, criticised the exemption of the clergy and of the nobility.³ Already under Louis XIII., throughout two-thirds of France, where the *taille* was a personal tax, 2,000,000 of richer persons were exempt from the *taille*, while 8,000,000 were taxable. D'Avenel says that the workmen paid under Louis XIII. four and a half times as much as to-day, though they earned much less.⁴ The grievous exemptions continued so that the Third Estate during the eighteenth century supported the chief burden of royal taxes and was subjected to onerous feudal dues besides.⁵

¹ *Essai sur le despotisme, Oeuvres*, viii, 111 et seq., Paris, 1835.

² The cahier of the Nobility of Sisteron asked: "Qu'il sera fait des règlements, et pris des précautions pour que les troupes nécessaires au maintient de la tranquillité générale ne puissent jamais servir à opprimer le citoyen et à enchaîner la liberté publique." *Arch. Parl.*, iii, 364. The cahier of the Nobility and the Third Estate of Péronne asked: "Que . . . les officiers et les soldats, en prêtant le serment de fidélité au Roi, le prêtent aussi à la nation et jurent d n'exécuter aucun ordre qui soit contraire aux lois constitutionnelles." *Arch. Parl.*, v, 356.

³ Jean Bodin, *De Republica*. Libre vi, chap. ii.

⁴ *Hist. Gén.*, v, 362.

⁵ *État de la France en 1789*, Paul Boiteau, ch. xiv, Paris, 1861.

The Physocrats advocated as a remedy for this injustice a system which should make the taxes proportionate to each one's productive riches. Turgot, taking the first step towards the realization of this idea, said, in defense of his proposal for the abolition of *corvées*, February, 1776: "The expenses of government having for their object the interest of all, all should contribute to them; and the more one enjoys the advantages of society, the more one should regard himself honored in sharing the expenses."¹ But his efforts were vain; for the privileged classes esteemed their exemptions too highly to submit tamely to a burdensome reform; hence they stubbornly persisted in their resistance to innovations in the customary methods of collecting taxes. Nevertheless there was a growing sentiment in favor of reform;² so that when the *cahiers* of 1789 were prepared, the majority of those of the higher orders acceded to an equal partition in the burdens of the fisc.³

"Art. 14. All the citizens have a right to decide, either personally or by their representatives, upon the necessity of the public contribution; to grant this freely; to know to what uses it is put, and to fix the proportion, the mode of assessment and of collection, and the duration of the taxes."

The French monarch, as in other European countries, from the time that the royal domains were found insufficient to meet the governmental expenses, was engaged in a continual struggle with the nation over the right to grant subsidies. The nation asserted only sporadically and incoherently its right to vote these supplies. For the French did not manifest that persistent and determined resistance to appropriations, unrequited by redress of political grievances, which their English neighbors exhibited so often and in such a marked degree. Nevertheless, during a minority or under a weak monarch, when able popular leaders flourished, the cause of the people was more stubbornly maintained. The States General claimed this guardianship in earlier days; but in the two centuries previous to the Revolution it was the *Parlement* of Paris that contended with increasing vigor and obstinacy against the arbitrary exactions of the king. As a final resort, it

¹ Alfred Neymarck, *Turgot et ses Doctrines*, i, 257 *et seq.*, 2 vols., Paris, 1885.

² *Hist. Gen.*, vii, chap. xii.

³ For instances of the abuses at which Art. 13 aimed, see De Tocqueville, *L'Ancien régime*, trans. by Henry Buor, notes 32-38, pp. 271-273.

asserted, July 30, 1787, that "le principe constitutionnel de la monarchie française était que les impôts fussent consentis par ceux qui devraient les supporter."¹ The continued and inextricable confusion of finances was the immediate cause of the calling of the Notables, and later of the States General. So far had the public sentiment reacted against the actual fiscal mismanagement, that the *cashier* were well-nigh unanimous in seeking for the nation the right to grant subsidies.²

"Art. 15. Society has a right to require of every public agent an account of his administration."

Article 15 was both theoretical and reactionary against actual abuses. If the nation was to be supreme over all of its agents, it could only hope effectually to maintain that superiority by holding all its functionaries strictly accountable. Practical experience under the monarchy in the collection and the expenditure of finances had impressed an effective lesson upon the French people of the abuses incident to irresponsible officers. The *Cour des Aides*, in its noteworthy remonstrance of 1775, reviewed the status of the financial administration. The injustice of the *ferme*, the arbitrariness of the beaureacracy, the complexity of the system, the failure of popular petitions to reach the throne, and the need of thorough reform, were clearly set forth.³ Then, too, Necker, by the publication of his *Compte rendu* (1781) and *L'Administration des finances* (1785), had afforded the nation a glimpse of public finances imperfect, yet in the highest degree stimulating to its curiosity.⁴ As an illustration of the status of public opinion, the

¹ Rocquain, *L'esprit rév.*, 448.

² For the part taken by the States General in granting subsidies, see Henri Hervieu, *Recherches sur les premiers États généraux*, Paris, 1879; G. Picot, *Hist. des États Généraux* Paris, 1885, 5 vols.; Ch. V. Langlois, *États généraux* in *La Grande Encyclopédie*; for that of the parlements, see Rocquain, *L'esprit rév.*, and Ch. Gomel, *Les Causes financières de la révolution française*.

³ Protest of the Cour des Aides of Paris, April 10, 1775, in *Translations and Reprints from the Original Sources of European History*, edited by James Harvey Robinson, Ph. D., with an English version by Grace Read Robinson.

⁴ Gomel in *Les Causes financières de la révolution française*, p. 113, gives the following quotation from a contemporary writer: "Le livre de Necker sur *L'administration des finances* produisit autant d'effet que si l'auteur avait encore dirigé celles du royaume. . . . Des magistrats, des juriconsultes, des militaires, des prélats l'étudieraient, non pour devenir administrateurs, mais pour se rendre des censeurs redoutables de l'administration.

Notables in 1787 demanded that some report of receipts and expenses should be published annually, and that capable men, foreign to the administration, should be called to the *conseil des finances* for reviewing the work.¹ Here, too, the *cahiers* were practically a unit in their demands.

"Art. 17. Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified."

Private property under the *ancien régime* was not sacred. De Tocqueville cites the following, which may serve us for illustration of the condition: "A royal declaration was made, suspending in time of war repayment of all loans contracted by towns, villages, colleges, communities, hospitals, charitable houses, trade corporations and others, repayable out of town dues by us conceded, though the instrument securing the said loans stipulates for the payment of interest in the case of non-payment at the stipulated time. Thus not only is the obligation of repayment at the stipulated terms suspended, but the security itself is impaired."² This article, seventeenth, was also reactive against the grievous and burdensome *corvées*, military convoys, and forced transportation of convicts.³

The remaining seven articles are more theoretical, covering the doctrines of liberty, equality, natural and inalienable rights, national sovereignty, the social contract and the separation of powers. The views expressed were, in the main, accepted at least in theory in the American States. France was not, however, indebted to the colonies for them; although their germinal ideas had been introduced from the teachings of foreign writers, notably from the English, they had grown up in France largely as a home product.

The doctrine of national or popular sovereignty was no new conception for the French nation. It had been appealed to by the Church to check the secular power, and by the Empire to check

¹ Rocquain, *L'esprit rev.*, 444.

² *L'Ancien Rég.*, trans by Henry Reeve, note 39, p. 273.

³ A. Babeau, *La Ville sous l'ancien régime*, ii, 9; Reeve's translation of De Tocqueville, *Ancien régime*, notes 60-62, pp. 286, 287.

ecclesiastical encroachments. Thomas Aquinas, the oracle of the Church, had recognized the popular will as a limitation upon the royal power, and had commended the elective form of monarchy.¹ Marsilio of Padua, in his *Defensor Pacis*, was even more pronounced in favor of popular sovereignty. "The sovereignty of the State," he said, "rests with the people; by it properly are the laws made and to it they owe their validity. From the nation itself proceeds all rights and powers, it is the authoritative law-giver among men."² In the sixteenth century the Calvinists and the League alternately made use of the theory of popular sovereignty.³ This theory was revived in the eighteenth century and popularized by Rousseau and his disciples.

The doctrine of natural rights has not so remote an origin for France. De Tocqueville rightly pointed out the distinction between liberty, regarded as "the enjoyment of a privilege" and liberty considered as "the exercise of a universal right"; he also showed that the Romans and the feudal aristocracy figured their liberties to themselves under the former type; and that it was not till the eighteenth century that the French nation began to conceive of liberty as a natural right.⁴

This transformation of the theory of liberty from a privilege to a natural right was chiefly accomplished after 1734. Boulainvilliers, in *L'Histoire de l'ancien gouvernement de la France*, published (1727) in Holland after his death, asserted as its fundamental thought: "Le gouvernement féodal est le chef d'œuvre de l'esprit humain." To the author, all progress of royal, civil, or municipal authority is an usurpation of the rights of the nobility, who were the only heirs of the early Franks, conquerors of the Gauls.⁵ This champion of the feudal aristocracy was not answered in the name of democracy, but of privileged rights. Abbé Dubois, the secretary of the French Academy, replied in "the name of Roman Gaul, semi-municipal and semi-monarchical." This reply, entitled, "*Histoire critique de l'établissement de la monarchie fran-*

¹ Poole, *Illustrations of the History of Mediaeval Thought*, p. 242.

² *Ibid.*, p. 267.

³ E. d'Eichthal, *souveraineté du peuple*, 37-40.

⁴ *Memoirs, Letters and Remains of Alexis de Tocqueville*, i, pp. 254-260, 2 vols. London, 1861.

⁵ Martin, *Histoire de France*, vol xv, 334.

faise" (1734), denied the Frankish conquest and asserted that the French monarchy had succeeded in a peaceable way to the rights of the Roman Empire over the Gauls, and that the feudal system had been established by usurpation several centuries later. Public opinion and the judgment of the *savants*, says Martin, pronounced in favor of Dubois.¹

Saint Pierre, d'Argenson, and Montesquieu contributed to the political literature of the century, but did not formulate a new theory of rights. The Physiocrats applied the natural law to economic problems, but not specifically to political questions; this was reserved for Rousseau. In the Genevan philosopher's writings, natural rights and kindred democratic ideas were treated in such a popular style that they were able to revolutionize the French political theories in a generation.

A critical student cannot attribute complete originality to Rousseau; the similarity of his views to those of Locke is too striking. He borrowed from his English predecessor psychological, philosophical and political conceptions.² The *Contrat Social* (1762), however, according with the nascent political *Zeit-Geist* of France, found conditions favorable to the ready acceptance of its ideas. The philosophers had shaken the authority of dogma, humanitarian views were gaining prominence, men were tired of arbitrary imprisonments and of useless privileges, moreover, the long struggle between the monarch and the *parlements* was still unsettled, the theory of the right of *parlement* to refuse to record decrees was found to need a firmer basis than custom. The sympathies of even the nobles were awakened in behalf of the peasants and the curates. The Physiocrats hoped for tax reform, to be effected by a strong sovereign, though, when attempted by Turgot, it had failed. Amid such conditions the *Contrat Social*

¹ Martin, *Histoire de France*, 355.

² R. L. Corwin, *Entwicklung und Vergleichung der Erziehungslehren von John Locke und Jean Jacques Rousseau*, Heidelberg, 1894; Vasile Saftu, *Ein Vergleich der physischen Erziehung bei Locke und Rousseau*, Bucarest, 1889; David G. Ritchie, *The Social Contract*, in vi. vol. of *Pol. Sc. Quart.*; Jaeger, *Geschichte der sozialen Bewegung und der Socialismus in Frankreich*, vol. ii, 342, Berlin, 1890; Prof. J. Horning, *Les idées politiques de Rousseau*, in J. J. Rousseau jugé par les Genevois d'aujourd'hui, p. 135 et seq.; also M. Jules Vuy in *Bulletin de L'Institut National Genevois for 1883*, pp. 273-344; Rousseau et Locke, *Henri Marion*; J. Locke, *Sa Vie et son Oeuvre d'après des documents nouveaux*, Paris, 1893.

was being read. Its striking, stimulating apothegms furnished apt quotations. Its effect was revolutionary. Even philosophers and magistrates were not insensible to its stimulus.¹ When the nation was called to speak, on the eve of the Estates General, in pamphlets and in *cahiers*, the influence of Rousseau was patent. The speeches made in the National Assembly were constantly interlarded with quotations and ideas from *Contrat Social*.²

After this general introduction to the political theories of the Revolution, we are ready to examine the remaining articles of the Declaration of the Rights of Man. We shall place in parallel with these some quotations from the *Contrat Social* that will serve to indicate the similarity of their ideas.

"1. Men are born and remain free and equal in rights. Social distinctions may only be founded upon the general good."

"It is agreed that anything of power or property or liberty which is alienated by the social compact, is only a part of all the use of which is of importance to the community."³

"2. The aim of all political associations is the preservation of the national and imprescriptible rights of man. These rights are liberty, property, security, and resistance of oppression."

"To find a form of association which shall defend and protect with the public force the person and property of each associate, and by means of which each, uniting with all, shall obey however only himself, and remain as free as before; such is the fundamental problem of which the *Social Contract* gives the solution."⁴

¹ Voltaire in a letter of April 2, 1764, wrote: "Tout ce que je vois jete les semences d'une révolution qui arrivera immanquablement, et dont je n'aurai pas le plaisir d'être témoin. . . . Les jeunes gens sont bien heureux: ils verront de belles choses." Quoted in Martin, *Hist. de Fr.*, vol. xvi, 136. Malesherbes, in speaking to the king as the organ of the *parlement* in 1770, said: "You hold your crown, Sire, from God alone; but you will not refuse yourself the satisfaction of believing that, for your power, you are likewise indebted to the voluntary submission of your subjects. There exist in France some inviolable rights, which belong to the nation." Quoted from *Remontrances de la Cours des Aides*, 1770, by De Tocqueville; *Mémoires, etc.*, i, 259-60. For Rousseau's literary influence, see Joseph Texte, *Jean Jacques Rousseau et les Origines du Cosmopolitisme Littéraire*, Liv. ii, Paris, 1895.

² A pamphlet of 1789, "Lettre d'un Curé de Picardie à un évêque sur le droit des curés d'assister aux assemblées du clergé et aux États-généraux," etc., illustrates how the curates applied the natural rights doctrine: "Les droits des hommes réunis en société ne sont point fondés sur leur histoire mais sur leur nature. Il ne peut y avoir de raisons de perpétuer les établissements faits sans raisons, 3 p." In vol. 84 of *French Revolution Collection of the Pennsylvania Historical Society*.

³ *Contrat Social*, Livre ii, ch. iv. 43.

⁴ *Ibid.*, Livre i, ch. vi, 20.

“3. The principle [principe] of all sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation.”

“4. Liberty consists in being able to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other member of the society the enjoyment of the same rights. These limits can only be determined by law.”

“5. Law can only prohibit such actions as are hurtful to society. Nothing may be prevented which is not forbidden by law, and no one may be forced to do anything not provided for by law.”

“6. Law is the expression of the general will. Every citizen has a right to participate personally or through his representatives in its formation. It must be the same for all, whether it protects or punishes. All citizens, being equal in the eyes of the law, are equally eligible to all dignities and to all public positions and occupations, according to their abilities and without distinction except that of their virtues and talents.”

“I say then that the sovereignty, being only the exercise of the general will, can never alienate itself, and that the sovereign, who is not a collective being, can be represented only by himself; power can transmit itself, but not will.”¹

“Any service that a citizen can render the State is due from him whenever the sovereign demands it; but the sovereign, for his part, cannot place any burden upon his subjects which will not be useful to the community; he can not even desire to do so, for, under the law of reason as under the law of nature, there is nothing done without a purpose.”²

“When I say that the object of laws is always general, I mean that the law considers subjects in a body, and actions as abstract; a man is never considered as an individual nor an action as an individual action.”³

“By whatever path we return to the principle, we always reach the same conclusion; that the social compact establishes among citizens such an equality that they all engage under the same conditions, and should enjoy the same rights. Thus by the nature of the agreement, an act of sovereignty, that is, any authentic act of the general will, obliges or favors equally all citizens; so that the sovereign knows only the body of the nation and distinguishes no one of those composing it.”⁴

The Physiocrats also had, in a measure, advocated these principles. Both Quesnay and Turgot expressed themselves unequivocally for the protection of private property.⁵ Let it be asserted with the strongest emphasis that these six articles were not

¹ *Contrat Social*, Livre II, ch. I, 35.

² *Ibid.*, Livre II, ch. IV, 43-44.

³ *Ibid.*, Livre II, ch. VI, 54-55.

⁴ *Ibid.*, Livre II, ch. IV, p. 46.

⁵ Quesnay said: “The security of property is the essential foundation of the economic order of society.” *Maximes générales du gouvernement*, *Physiocrates*, ii, 83, Paris, 1846. Turgot, writing of the omnipotence of the State, said: “This principle that

merely the expression of theories. They had an intensely practical genesis, for they were the slowly-matured product of a reaction against a long-felt vexatious regime. That regime had interfered with private property and with individual action in such ways as to be grievous, yes, intensely grievous to the people.

"Art. 16. A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all."

The theory of the separation of powers was one idea taught by Montesquieu¹ that had been gradually accepted by his countrymen. He was studied by the would-be-publicists of the Revolutionary era, and much stress was put upon this constitutional principle. The Constitution which they formed is the best example of the thorough application of this impracticable doctrine.²

In this discussion we have shown that while the suggestion of a Declaration of Rights came from the early American State Constitutions, its content was French. Its internal resemblance to the American instruments is attributable to the fact that the abuses to be feared and the recognized political theories were the same in both countries. In truth, France had greater reason to apprehend the return of the long-endured abuses, from which she was even then endeavoring to extricate herself, than had America. Likewise the fact that each country had derived its democratic views from a common source—the teachings of the English Puritans—largely explains the identity of the existing political theories.

nothing should limit the rights of society upon the individual, save the greater good of society, appears to me false and dangerous. Every man is born free, and this liberty can never be limited unless it degenerate into license, that is to say, ceases to be liberty. . . . It is forgotten that society is made for the individual, that is, instituted only for protecting the rights of all, by assuring the accomplishment of all mutual duties." Quoted by M. E. Daire, *Physiocrates*, ii, Introd., xxi, xxii.

¹ *Esprit des Lois*, Liv. xi.

² Saint Girons, *Droit public français*, treats thoroughly the question of separation of powers. Mirabeau in referring to the separation of powers, in a speech delivered in the Assembly July 16, 1789, pointed out the general misapprehension of this theory: "Nous aurons bientôt occasion d'examiner cette théorie des trois pouvoirs, laquelle exactement analysée montrera peut être la facilité de l'esprit humain à prendre des mots pour des choses, des formules pour des arguments et à se routiner vers un certain ordre d'idées sans revenir jamais à examiner l'intelligible définition qu'il a prise pour un axiome." *Arch. Parl.*, VIII, 243.

CONSTITUTION.

THE States-General which met at Versailles, May 5, 1789, assumed in the following June the name of National Assembly, and undertook the formulation of a written constitution. According to the current views, this epochal transformation was either a political freak of an old monarchy, newly leavened with democratic ideas, or a manifestation of the rare phenomenon of a nation's being carried sympathetically in the wake of a distant and new-born republic. But a careful consideration of the events, institutions, and conditions of France previous to the action of the National Assembly proves conclusively that the traditional interpretations are not correct.

It is foreign to the province of the present paper to explore minutely the shadowy historical region, whence arose the political institutions of monarchical France, or to analyze exhaustively those institutions themselves. It is sufficient to note that already at the beginning of the XVII. century there had developed certain institutions with a normal mode of procedure, that may justly be called a constitution, not embraced in written documents, but one implied in the institutions and usages. The leading features of that constituted government were four: the King, the States-General, the *Conseil d'Etat* and the *Parlements*.

The king was not only the executive, but the initiator of laws, and the source of justice.

The States-General, judged by precedents, was an advisory body to the king, about which there existed much uncertainty as to its composition, its powers and its period of assembling. It was dependent upon the monarch for convocation, and for the promulgation of the results of its deliberations.¹

The *Conseil d'Etat*, composed of the nobility, was, in a narrower sense, the permanent advisory council of the king. In this body the laws originated, and under its supervision the administration

¹ G. Picot, *Histoire des Etats généraux*; Ch. Langlois, *Etats généraux* in *La Grande Encyclopédie*.

was accomplished. It also had judicial functions, being superior to the *Parlement* as a *cour de cassation* in civil cases.

The duties of the *Parlements* were primarily judicial, but in addition the *Parlement* of Paris possessed legislative functions, inasmuch as the laws were sent to it for registration. The *Parlement* by custom had come to make use of remonstrances to the king in case of laws distasteful to them. Though some monarchs, as Louis XI., XII., and Henry IV., had paid some regard to these remonstrances,¹ yet even in the sixteenth century the remonstrance did not stop the determined monarch, but the court was forced to yield to the royal wish in the *lit de justice*.² There existed, therefore, a singular balance of power between the *Conseil d'État* and the *Parlement*. The *Conseil d'État*, as a *cour de cassation*, might annul the parliamentary remonstrance, and, inversely, the *Parlement* might, in virtue of its power to register, check the laws originating from the *Conseil d'État*. It is worthy of remark, however, that even at this period, this normal distribution of functions was not so balanced and guarded as to avoid abnormal procedure. Neither the *States General* nor the *Parlement* was put wholly beyond the control of the executive.

D'Avenel, expressing a view not uncommon in the earlier days of the Revolution of 1789, asserts in his remarkable book, *Richelieu et la monarchie absolue*, that France had a constitution before the ministry of the politic Richelieu, yet not thereafter,³ but it is difficult to defend such a declaration. It may be admitted that the *States-General* were no longer convoked after 1614, that the *personnel* of the nobility was altered, that the *Parlement* was now and then forced into acquiescence to the royal will; nevertheless the two bodies, the *Conseil d'États* and the *Parlement*, continued to function very nearly as before, and at times the *Parlement* emerged from its submissiveness and haughtily asserted its pretensions.

In a series of conflicts between the court and the *Parlement*, into which we have not space to go exhaustively, the idea of fundamental or constitutional laws, of which the *Parlement* declared itself the guardian, was repeatedly asserted; in the later period of

¹ Jules Flammermont, *Remonstrances du Parlement de Paris au XVIII. siècle*, Introd., XCII.

² *Dictionnaire Nouvelle, Parlements*.

³ T. i, 78, 266.

this constitutional struggle, partly from the inability of the *Parlement* to maintain its pretensions and partly from the development of the ideas of natural rights, of the rights of the people and of the rights of the nation, the desire for some more distinct definition of the power of the executive and the rights of the nation became manifest. The *Parlement*, composed of an aristocracy whose office was an hereditary possession, was naturally alert to extend its political influence; this extension of necessity brought it into conflict with the absolutism of the monarch. When a vigorous monarch, or skillful, energetic minister was at the head of affairs, the *Parlement* was driven to humble obedience; but where there was a regency, a weak monarch, or a crisis, financial or administrative, the legal aristocracy reasserted and extended their pretensions. By a decree of February 21, 1641, Richelieu declared that the *parlements* had been established only for granting justice, forbade any modification of decrees, ordered that in financial matters they might remonstrate once, but in administrative matters no remonstrance was allowed. During the remainder of Louis XIII's reign they were obedient; but on the death of the king they immediately manifested their vitality by breaking his will and fixing the regency.¹

The *Fronde* was the acme of the parliamentary resistance of this period. Louis XIV. did not forget this high-handed opposition, and consequently by two decrees he reduced this recalcitrant body to a strictly subordinate position for the last forty years of his reign.² But on the death of the *Grand Monarch*, the *Parlement* showed its old spirit, annulled the will of the dead king concerning the regency, and for twenty years solemnly reiterated its

¹ Martin, *Histoire de France*, xi, 543.

² These two decrees, one 1667, the other 1673, are given in substance in Jules Flammermont, *Remontrances*, Intro. i and ii. The second was the more sweeping: "Dès que les gens du Roi auraient reçu les ordonnances, édits, déclarations ou lettres patentes, ils devraient dorénavant les présenter tout de suite aux cours toutes chambres assemblées, qui auraient à les enregistrer purement et simplement sans aucune modification, restriction, in autres clauses qui en pussent surseoir ou empêcher la pleine et entière exécution. Dans le cas où les cours auraient des remontrances à présenter elles ne pourraient plus le faire qu'après que l'arrêt d'enregistrement aurait été donné et séparément rédigé. Mais que le Roi donnât suite ou non à ces remontrances, qui devaient être dressée dans la huitaine après l'enregistrement, les cours ne devaient pas faire d'itératives remontrances."

vague constitutional claims in elaborate remonstrances. To this period of activity succeeded a time of comparative submission, in which the remonstrances are less prompt, haughty, and insistent.

In 1748, the struggle renewed itself, and soon each side showed an ardent determination to conquer. The monarch resorted to *lets de justice*, to exile, and to the institution of irregular courts in order to provoke the magistrates to obey, while they answered with *iterative* remonstrances and with refusals to dispense justice. From these remonstrances we are able to ascertain the pretensions of the *Parlement*, and to trace, though with much vagueness and incoherence, those principles which they called constitutional and fundamental. On the other hand, the responses of the king reveal the persistent claims of absolutism as to the royal source of law.

The magistrates based their shadowy claims upon different grounds. Frequently they appealed to precedent; as in 1718, the *Parlement* of Paris declared that the most absolute kings, specifically Louis XIV., had *continually* made use of the *Parlement* for registration.¹ Justice and expediency were also invoked in their support.

Already in the period of the regency, following closely after their submissiveness under Louis XIV, we find a hazy but general distinction between statutory and constitutional laws: "While we recognize, Sire, that you alone are lord and master and the sole lawgiver, and that there are laws which changing times, the needs of your people, the maintenance of order and the administration of your kingdom may oblige you to modify, substituting new ones according to the forms always observed in this state, we nevertheless believe it to be our duty to call to your attention the existence of laws as old as the monarchy, which are permanent and invariable, the guardianship of which was committed to you along with the crown itself. . . . It is by reason of the permanence of such laws that we have you as lord and master. It is this permanence which leads us to hope that the crown, having rested upon your head during a long, just, and glorious reign, will pass to your posterity for all time to come. In recent times [the *Parlement* adds] it has been clearly shown how much

¹ Flammermont, *Remontrances*, 95.

France owes to the maintenance of these original laws of the state, and how important it is in the service of your Majesty that your *Parlement*, which is responsible to you and to the nation for their exact observations, should assiduously guard them against any encroachment."¹ Here then is found in embryo the programme which the magistrates pursued in their legislative opposition to the crown. Nevertheless there is, judging from a comparison of these earlier remonstrances and those emitted later, some progress in the distinction of organic and of statutory law, and in the enumeration of the fundamental principles.

The *Parlement* of Brittany, in a remonstrance of July, 1771, said: "There is an essential difference between the transitory regulations which vary with the times, and the fundamental laws upon which the Constitution of the monarchy rests. In respect to the former [that is the transitory regulations] it is the duty of the courts to direct and enlighten the ruling power (l'autorité), although their opinions must, in the last instance, yield to the decision of your wisdom, since it appertains to you alone to regulate everything relating to the administration. To administer the state is not, however, to change its constitution. . . . It is, therefore, most indispensable to distinguish or to except the cases where the right of expostulation suffices to enlighten the ruling power in an administration which, in spite of its wide scope, still has its limits, and those cases where the happy inability [of the monarch] to overstep the bounds established by the constitution implies the power necessary legally to oppose what an arbitrary will cannot and may not do."² To determine accurately the content of the *lois fondamentales* of which the *Parlements* asserted themselves to be protectors, is difficult. The *Parlements* themselves did not deem it expedient, either for their own claims or for those of the monarch, to attempt a too explicit formulation of these laws; vagueness was regarded a political virtue. A remonstrance of the *cour des comptes, aides et finances* of Normandy, openly admitted the disadvantage of such an enumeration: "Deign, Sire, to examine for yourself to what the decree of De-

¹ Cited in Prof. J. H. Robinson's very suggestive article, *The Tennis Court Oath* (*Political Science Quarterly*, Sept., 1895); from the *Itératives Remonstrances sur la Réforme des Monnaies*, July 26, 1718, Flammermont's *Remonstrances*, 94, 95.

² Cited by Prof. Robinson, *The Tennis Court Oath*, 467.

cember tends; it seems destined to draw the line between the power of the sovereign and the liberty of his subjects; this line always undetermined, which no hand has been bold enough to fix, which a salutary veil covers with useful shadows; the tenderness of princes for their people and the love of the people for their princes draw or withdraw these shadows according to the times or the reigns. Those who dare to-day to fix these limits and to say to France: There ends the legitimate liberty of the people, serve your interests badly, even politically."¹

The most precise formulation of the organic law of the French monarchy which I have found is the protest of the princes, signed April 4, 1771, and directed against the *Maupeou Parlement*: "We, the undersigned, consider that the French monarchy has been sustained, together with the glory, the splendor, and the power which it has enjoyed for so many centuries only by the maintenance of the primitive laws which are inherent in it, and form its title (droit) and essence; that the liberty belonging to every Frenchman, the title and the ownership of his property, that of inheriting from fathers or of receiving from relatives or friends, without being able to be deprived or hindered, otherwise than by the legal application of law for some crime previously and competently judged, and not by arbitrary and absolute will, are not the only rights of the nation and of the subjects nor the only fundamental laws of the monarchy; that the right of Frenchmen, one of the most useful to the monarch and one of the most precious to his subjects, is to have certain bodies of citizens, perpetual and irremovable, acknowledged in all times by the kings and by the nation, who under whatever form and name they have existed, concentrated in themselves the general right of every subject to invoke the laws, to demand their rights, and to have recourse to the Prince; whose most important functions have always been to be charged with watching over the maintenance of the established laws, to weigh in new laws their utility or the dangers of contradictions which might occur with the old laws, to verify them, and to represent to the sovereign all that is prejudicial to the rights of his subjects or to the primordial and constitutive laws of his kingdom. . . . ; that this necessary

¹ Jules Flammermont, *Le Chancelier Maupeou et les Parlements*, Paris, 1885, 370 pp.

surety cannot exist without irremovability of the title of those to whom are confided so important functions, that they have always been regarded as one of the principal safeguards of public liberty against the abuse of arbitrary power; that they are an integral part of the constitution of the State, and are found as much as any other law in the order of the fundamental laws of the monarchy."¹ However, the apparent attempt to be explicit here originates primarily, not in a desire to state distinctly the constitutional law, but rather to protect the prerogatives of the *Parlements* by coupling them with certain principles generally recognized as inviolable.

The *Parlements*, in their resistance to the royal power, showed, as early as the Fronde, a tendency to support each other, but it is particularly in the period of the *Maupeou Parlement* that the claims to *unity* and *indivisibility* became prominent.² These remonstrances, as well as the royal responses, were not withheld from the public, as the *ordonnances* which imposed upon the magistrates the duty of keeping their deliberations secret implied, but were hawked about the streets and eagerly welcomed by the people. Since in times of opposition, each *Parlement* aroused the sympathies of the citizens under its jurisdiction, their combination for mutual support against the crown extended the area of popular agitation. This exciting literature, issuing from the different courts, had, therefore, an educative effect upon the popular mind, rather in emphasizing the need of some limitation to royal power than in developing distinct and well-defined notions of political laws.³ The *Parlement*, while professing exemplary obedience to the king, said that there were moral limits to their obedience.⁴ That also took a popular turn, in professing to repre-

¹ Flammermont, *Le Chancelier Maupeou et les Parlements*, 380, 381.

² *Ibid.*, 117.

³ Barbier has left record of how intimate was the sympathy of the people with the *Parlement* in the struggle over Jansenism: "Le bonne Ville de Paris est janséniste de la tête aux pieds. . . . Tous degrés de Paris, hommes, femmes, petits enfants, tiennent pour cette doctrine, sans savoir la matière, sans rien entendre à ces distinctions et interprétations, par haine contre Rome et les jésuites, tout ce monde est entêt comme un diable. Les femmes, femmelettes et jusqu' aux femmes de chambre s'y feraient hocher." Cited in Aubertin, *l'Esprit public au XVIII siècle*, 263, 264.

⁴ "Votre parlement s'est toujours fait gloire de leur donner l'exemple de l'obéissance. Il vous a toujours prouvé par sa conduite que, si l'obéissance due à la Majesté du Roi

sent the nation or the people in the absence of the States-General. The remonstrance of the *cour des aides*, probably drawn up by Malesherbes, in February, 1771, indicates these popular pretensions. "The courts are to-day the only protectors of the feeble and the unfortunate: there have existed for a long time no States-General and in the greater part of the kingdom no provincial estates; all the bodies, except the courts, are reduced to a mute and passive obedience. No individual in the provinces would venture to expose himself to the vengeance of a *commandant*, of a *commissaire du conseil*, and still less to those of a minister of Your Majesty. The courts are then the only ones to whom it is still permitted to raise a voice in favor of the people, and Your Majesty does not wish to take away this last resource from distant provinces. But this decree, exiling the *Parlement* of Paris, tends to render this resource illusory."¹

Notwithstanding this avowed guardianship of the national rights, the feeling gradually grew that these ill-defined fundamental laws were too vague, that the *Parlements*, though persistent, stopped short of pertinacity, and that an aristocratic magistracy was not the real representation of the nation.

The first expression, so far as I have noted, of the need of a more definite political rampart against the crown was that of the Marquis de Mirabeau and his brother. In 1754, the Marquis wrote to his brother: "The more I consider the abuses of society and their remedy, the more I return to what you said to me five years ago, . . . that twelve principles established in twelve lines, once written in the head of the Prince or of his minister, and exactly followed in details, would correct and regenerate every-

était perdue, elle se retrouverait dans sa cour de parlement. Mais s'il y a des occasions où son attachement inviolable aux lois et au bien public semble ne pouvoir pas s'allier avec une obéissance sans bornes, alors il serait criminel envers vous-même et envers l'État d'oublier ce que lui disait en 1567 un chancelier de France: Vous avez juré dégarder tous les communs éléments du Roi, bien de garder les ordonnances qui sont ses vrais commandements. Ou ce qu'il disait lui-même en 1604 au Souverain: Si c'est désobéissance de bien servir, le Parlement fait ordinairement cette faute, et quand il se trouve confit entre la puissance absolue du Roi et le bien de son service, il juge l'un préférable à l'autre, non par désobéissance, mais pour son devoir, à la décharge de sa conscience." *Grandes Remontrances*, April 9, 1753; Flammermont, *Remontrances*, 529.

¹ Flammermont, *Le Chancelier Maupeou*, 269.

thing."¹ But this was only a solitary voice crying in the wilderness; it neither found a response in the people, nor became the determined policy of its enunciator.

The people, however, were awakening at least to the abuses of the *ancien régime*, and were groping after a remedy. Books, dealing with the right of insurrection, of the superiority of the nation to the crown, and with the refutation of divine rights and passive obedience, were written, read and discussed.² Humanitarian views, the theory of natural rights, and, consequently, a sense of the importance of the third estate, gained ground by degrees. Meanwhile the contest between the king and his *Parlements* continued. The Notables, called in 1787, affirmed that *the imprescriptible right to determine financial questions belonged only to the representatives of the nation*.³ The States-General were called for 1789.⁴ Owing to the failure of the monarch or minister, purposely or otherwise, to take the initiative, the radical element of the nation were able to secure almost universal suffrage and the union of the orders in one body. Judging from the *cahier* and the pamphlets of 1788 and 1789, we infer that the consciousness of the inadequacy of the old French Constitution was general.⁵ The *cahiers*, upon the question of the French Constitution, were moreover divided; some desired the preservation of the old Constitution, some a declaration of the rights of the nation, some a *charter*, while one formulated a new, complete constitution; on the whole, a majority favored a more careful guarantee of the nation's

¹ *Les Mirabeaus*, i. 181. This refers to constitutional ideas, not to a written constitution.

² Aubertin, 391, 392: Voltaire complained in the '60's of being tired of people, "qui gouvernaient les États du fond leurs greniers." Rocquain, *L'esprit rév.*, 244.

³ Gomel, 334.

⁴ The calling of the États généraux had been suggested by la Rochefoucauld, 1774; by d'Espremenil, 1775, and in remonstrances of the *cour des aides* of Paris and the *Parlement* of Besançon 1775 and 1781, and in the Assembly of Notables by Lafayette in 1787.

⁵ The contents of the *cahiers* are difficult to tabulate, owing to their various modes of expression. The following summary will, however, give an approximate idea of their import upon constitutional questions: Of 448 primary and secondary *cahiers* examined, 305 demanded or implied a constitution; 194, the monarchy; 401, periodic États généraux; 372, granting of taxes by the États généraux; 269, legislation by the États généraux; 331, ministerial responsibility; and 366, proportional taxation.

rights.¹ The *cahiers*, it must be remarked, show a more perfect and uniform programme of civil reform than of political.

¹ The *cahier* of the nobility of the bailliage of Aumont asked: "Que l'ancienne constitution française est monarchique, que les lois fondamentales du royaume subaisteront dans leur intégrité et qu'elles ne pourront être changées par les députés aux États généraux, Que la formation des États généraux fait partie de la constitution." . . . *Arch. Parl.*, i, 766. Somewhat similar views are found in the *cahiers* of the clergy of Lectoure, *Ibid.*, ii, 66; of the clergy of Auten, ii, 100; of the clergy of Aval, ii, 137; of the clergy of Carcassonne, ii, 257; of the clergy of Blois, ii, 376; of the nobility of Guyenne, ii, 394; of the clergy of Châlons-sur-Marne, ii, 582; of the clergy of Clermont-Ferrand, ii, 766; of the third estate of Comte de Comminges, iii, 26; of the nobility of Constances, iii, 52; of the clergy of Etampes, iii, 279; of the nobility of Libourne, iii, 506; of the nobility of Timoux, iii, 577; of the nobility of Mâcon, iii, 623; of the nobility of Gevaudan, iii, 754; of the third estate of the parish of Ferrières en Brie, iv, 545; of the nobility of Provins and Montereau, v, 448; of the nobility of Touraine, vi, 39; of the clergy of Vermandois, vi, 134; of the clergy of Villers-Catterels, vi, 187; of the clergy of Vitry le Français, vi, 207; of the nobility of Besançon, vi, 516. Some wished to re-establish in more definite terms the old constitution. The *cahier* of the clergy of Auxerre asked: "Que les États généraux s'occuperont d'abord de reconnaître, conserver, fixer irrévocablement, et rendre publiques les lois constitutionnelles de la monarchie, les droits du Roi et ceux de la nation," ii, 111. Of similar import were the *cahiers* of the clergy of Argenois, i, 675; of the third estate of Albert, i, 704; of the third estate of Alençon, i, 716; of the third estate of Exemes, i, 727; of the nobility of Pont-à-Mousson, ii, 229; of the nobility of Castres, ii, 566; of the clergy of Caux, ii, 573; of the nobility of Caux, ii, 575; of the nobility of Châlons-sur-Saône, ii, 604; of the clergy of Châteauneuf en Thimerais, ii, 639; of the nobility of Launes, iii, 94; of the nobility of Evreux, iii, 295; of the third estate of Province of Forez, iii, 385; of the clergy of Pays de Labourt, iii, 424; of the nobility of Montagres, iv, 20; of the Parish of Clermont-Mendon, iv, 440; of the third estate of Agenois, i, 687. A smaller number of the *cahiers* asked for a new constitution. The *cahier* of the third estate of Paris intra muros presented a model constitution, essentially similar to the one actually framed, v, 581. The Parish of Tous-sus-le-Noble, of Paris, *hors des murs*, instructed that: Les députés demanderont une nouvelle constitution nationale, la suppression de toutes les lois, qui, jusqu'à présent, ont été considérées constitutionnelles, comme illégalement établies et n'ayant pas reçu l'approbation de la nation, v, 138. The third estate of Mont de Morsan said: Il est temps qu'on pose les règles fixes, et qu'on assure à la France une Constitution qui garantisse les droits naturels et imprescriptibles des hommes, iv, 34. The third estate of Etampes, after referring to the abuses, said: Nos premiers voeux doivent naturellement se porter sur ce qui doit former à l'avenir la constitution du royaume. Le anciens monuments nous offrent si peu de conformité et de certitude, que nous devons profiter des lumières actuelles pour opérer un plus grand bien, iii, 283. The nobility of Blois said: Le malheur de la France vient de ce qu'elle n'a jamais eu de constitution fixe, ii, 379.

The pamphlets of the day, being the expression of the convictions of individuals, reveal more clearly the political thought of the radical element. Count de Mirabeau's *Lettres de cachet*, published in 1783, may be regarded as among the earliest of such personal expressions. Its attitude was rather negative than constructive. It attempted to show that a despotism depended not at all upon the character of the particular sovereign, but on the absence or insufficiency of laws; that France without a veritable constitution was only a despotic state, and that there is no mean between an absolute despotism and the absolute reign of law.¹ In 1787, the Count declared, "What is necessary is a constitution; France is ripe for the Revolution."²

Other pamphlets of 1788 and 1789 indicate a tendency to discuss constitutional law from the historical and crudely comparative standpoint, and to apply the conclusions to the present conditions, but in the attempt to formulate their results, they are less clear and coherent. One of these drawn up in 1789 devotes one hundred and thirty-seven pages to the discussion of the influence of Montesquieu in the present Revolution, and denounces him for not declaring boldly that France was a despotism. It concluded that France has in reality no constitution.³

How far the king meant that the States-General should possess a constitutional character is difficult to determine. The Letter of Summons repeatedly asserts the desire to affect a "fixed and constant order in all parts of the administration."⁴ Mirabeau claimed that the king himself had recognized "the necessity of giving

¹ Rocquain, *L'Esprit*, 405, 406; *Lettres de cachet*, ch. viii, edition of 1820.

² Cited in Rocquain, *L'Esprit*, 457.

³ Qu'est-ce que donc qu'une Constitution, si ce n'est l'ordre, la distribution des deux grands pouvoirs politiques et de leur séparation dans différentes mains, et leur exercice ou différentes formes : le tout sanctionné et constitué, cest-à-dire statué avec la nation assemblée, représentant l'également la volonté générale, et voulant librement pour l'intérêt commun ? Si l'on recherche en France ces deux pouvoirs, ou les trouve, par le fait, réunis dans la même main, sans qu'on puisse voir l'apparence d'un droit contraire qu'en remontant vers les âges ténébreux de l'ignorance et de la servitude. Or la collection de ces pouvoirs ne peut former que l'autorité arbitraire d'un despote ; ce qui exclut toute idée de Lois fondamentales et constitutionnelles : aussi n'en trouve-t-on en assumé. *Donc point de Constitution*, Vol. 87 of *Fr. Rev. Col. of Penn. Hist. Soc.*, 114, 115.

⁴ *Arch. Parl.*, i, 543, 544.



France a fixed method of government,"¹ and La Marck confirmed this declaration.² We shall perhaps have attributed sufficient meaning to these hazy avowals if we say that Louis XVI., partly from his paternal spirit, and partly from a desire for relief from financial crises, meditated, in his more liberal moods, granting the nation some sort of a *charter*, in the formulation of which he wished the assistance of the States-General. This resuscitated institution convened at Versailles, May 5, 1789.

The first months were occupied in the disputes over the verification of the powers of the deputies. On May 28, a representative of the nobility, Count de Crillon, said that "he was of the firm opinion that it was less for maintaining than for establishing the Constitution that they were called together."³ On June 15, Abbé Siéyès announced that those whose powers had been verified represented ninety-six per cent. of the nation, and suggested as a fitting name, "*Assemblée des représentants*." Mirabeau, at the same session, offered a series of resolutions that provoked much discussion, one of which affirmed that their first duty was "to agree upon and to fix legally the principles for the regeneration of the kingdom, to assure the rights of the people, to adopt the basis of a wise and useful constitution, and, to secure these rights from all attempts, they shall be put under the safeguard of the legislative power of the king and of the National Assembly." Rabaud de Saint Etienne, in another series of resolutions, expressed the same conviction.⁴ Two days later, the name "National Assembly" was adopted and an oath taken "to fulfill with zeal and fidelity the duties which devolve upon us."⁵ Debarred from the place usually occupied by the Assembly by the carpenters who were at work upon it, the members of the third estate held their meeting,

¹ *Hist. Parl.*, i, 445.

² He said of Mirabeau: "Nous n'avons l'un et l'autre entrevu riende mieux pour la France qu'un gouvernement monarchique constitutionnel. De tous les rois, Louis XVI. était le plus propre à résoudre le problème. . . . Il croyait le gouvernement constitutionnel plus convenable, et il le désirait; et je puis le dire avec autant de certitude que conviction, la reine partageait à cet égard les opinions et les penchants de Louis XVI.; les matériaux qui sont dans mon portefeuille rendent ces assertions incontestables." *Correspondence entre Mirabeau et La March*, i, 67, 95.

³ *Arch. Parl.*, viii, 55.

⁴ *Ibid.*, 113.

⁵ *Ibid.*, 127.

June 20, in the Tennis Court at Versailles, and there adopted the resolution which declared the National Assembly a Constitutional Convention, and subscribed to the following, known as the Tennis Court Oath: "The National Assembly, regarding itself as called upon to establish the Constitution of the kingdom, effect a regeneration of the state and maintain the true principles of the monarchy, may not be prevented from continuing its deliberations in whatever place it may be forced to take up its sittings. It further maintains that wherever its members are assembled, there is the National Assembly. The Assembly decrees that all its members shall immediately take a solemn oath never to be dissolved and to come together whenever circumstances may dictate, until the Constitution of the kingdom shall be established and placed upon a firm foundation."¹ It is beyond the sphere of our inquiry to follow this Constituent Assembly in their arduous and complex task of formulating a constitution, and of legislating at the same time for the kingdom, while exposed to court intrigues and popular intrusion.

Therefore, to conclude this chapter as we began, we have shown that the resolution of June 20 was neither a political freak, nor an act of imitation of a foreign nation. The example of the American Republic may have given stimulus and precision, yet the Tennis Court Oath must be regarded as the logical consequence of a transformation, which had been in progress for more than sixty years.

¹ *Arch. Parl.*, viii, 138.

THE ORIGIN OF THE REPUBLIC.

LOUIS XVI., in 1789, was praised by the mass of the French nation as the best of monarchs, and as the restorer of national liberties; his name was coupled with that of Henry IV, a king about whom tradition had thrown a halo of glory. But, on September 21, 1792, the newly-chosen Convention abolished the monarchy. So rapid is the transition from the one phase of the national feeling to the other, that it occasions a surmise either that the professed loyalty to the monarch in 1789 was not sincere, or that the action of the Convention was the work of a coterie of radicals, who misrepresented the popular feeling. A review of the period intervening between 1789 and 1792 shows that both of these suppositions are unwarranted, and confirms the conclusion that there was a progressive development of hostility, first to Louis XVI. and the royal family, and then to the monarchical government.

Previous to 1789, the term *Republic* is used by French publicists or agitators, but it is either in a sense so qualified as to be consistent with the monarchy, or as a form of government unsuited to France with its actual traditions and conditions.¹ The very nearly unanimous feeling and judgment in 1789 was that the monarchy was the best form of government for France, and that the chief need was to regenerate it. We have said that one hundred and

¹ D'Argenson in 1752 said: "Quant à moi je tiens pour l'avènement du second article et même du républicanisme." He meant Republicanism not in the modern sense, but in the sense of a monarchy with democratic local institutions. Aubertin, *L'Esprit public*, 278, 279. Even the *Esprit des Lois* gave some sanction to a Republic as an ideal form of government when it recognized *virtue* as the temper of society required for this form of government. Voltaire, friend of the monarchy and critic of Rousseau as he was, wrote: "Le plus tolérable des gouvernements est le républicain, parce que c'est celui qui rapproche le plus les hommes de l'égalité naturelle." He also compared the frequency of crimes under a monarchy with their infrequency under republics. Martin, *Histoire de France*, xvi, 136. Mably held that France should pass by degrees from a monarchy to a republic. *Ibid.*, 149 *et seq.*, Cerutti, the coadjutor of Mirabeau at a later date, had published a book on *Republics*. This book had been generally attributed to Rousseau. *Dictionnaire Universelle*.

ninety-four *cahiers* specifically asked for the retention of the monarchy; the silence of the others upon this question must not be construed to mean that their authors were indifferent or opposed to the monarchy, but rather that they believed it unnecessary to ask for what they already had, and against which there was no strong movement. As Paris may rightly be considered the source of the anti-monarchical agitation, the attitude of the third estate in this city at the opening of the Revolution may justly be taken to represent the feeling of the radical element toward the monarchy. In their *cahier* they said: "In the French monarchy, the legislative power belongs to the nation conjointly with the king; to the king alone belongs the executive power."¹ The *sub-cahiers* from the districts of the city expressed the same idea.² In truth, in not a single *cahier* examined do we find a hint of any opposition to the monarchy. Hence, it is to be inferred that, if any individuals had Republican inclinations, these inclinations were not shared by any appreciable part of the nation. A few men of the reform party, Lauragnais, Lally-Tollendal, and Montlosier, ventured to say that the French monarchy had originally been elective and that the elective monarchy would consequently be not an innova-

¹ *Arch. Parl.*, v, 282.

² The cahier of the district of Abbey Saint Germain des Prés said: Il sera arrêté qu'à la nation assemblée, réunie au Roi, appartient le droit de faire les lois de royaume. *Arch. Parl.*, v, 306; that of Saint Gervais: Le pouvoir législatif appartient conjointement au Roi et à la nation. . . . Le pouvoir exécutif appartient au Roi, comme chef suprême et premier magistrat de la nation, *Ibid.*, 308; that of Saint Louis-de-la-Culture: Qu'il soit reconnu que l'état est monarchique, que la couronne est héréditaire en ligne masculine, etc., *Ibid.*, 311; that of Theatins: Le Roi en (of the army) aura la discipline et le commandement général, *Ibid.*, 316; that of Sorbonne: that the States-General and the king jointly make the laws; that of Filles de Saint Thomas: that the nation and the king make the laws, and that the executive power be guaranteed to the king and to the reigning family without restriction or division; that of Bonne Nouvelle: that the laws should be made by the States-General and announced by the king; that of Saint Joseph Quartier des Halles: that laws be made by the nation and king jointly; that of Sainte Elizabeth: that the nation make the laws and the king sanction them; that of Enfants Rouges: that the laws be made by the nation and the king jointly; that of Blancs Manteaux: that France should have an hereditary monarchy in the male line of the reigning house, laws made by the nation and sanctioned by the king, and that the executive power should belong to the monarch; that of Capucins du Marais: that the laws be made by the nation and the king jointly; that of Minimes de la Place Royale: that the laws be made jointly by the nation and the king. Chassin, *Les Élections et Cahiers de Paris*, ii, ch. xvi-xviii.

tion, but a restoration of their early system;¹ but the adherence of these men to the monarchy in the early days of the *Constituent Assembly* is conclusive that by the elective monarchy they did not mean the Republic of 1792.

The Constituent Assembly, having been formed out of the States-General, had to formulate a constitution for the regeneration of France, and was obliged, therefore, to specify the divisions of government, designate the organs and the functions of each division, prescribe their powers, limitations, sources and transmission; hence the debates and decrees of this national body may be taken as indicative of the public sentiment toward the monarch. Here may be traced the changes worked in the public mind, the censure or the eulogy of persons and institutions. As this national assembly itself became transformed by the withdrawal of the more conservative elements, it reflected rather faithfully the change that was taking place in the minds of the radical classes of France.

This Assembly frequently gave expression of its satisfaction with the monarch and with the monarchy. Near the close of the famous session of August 4, 1789, when feudalism had been so enthusiastically renounced by its own favored sons, M. Lally-Tollendal proposed that they should proclaim "Louis XVI. the Restorer of French liberty." "The proclamation," we are told, "was made immediately by the deputies, by the people, and by all those who were present, and the National Assembly resounded for a quarter of an hour with the cries '*Vive le roi; vive Louis XVI., restaurateur de la liberté française.*'"² As early as July 4, 1789, Gouverneur Morris, a careful observer of the French spirit and movements, wrote: "They wish an American Constitution, with a king in the place of a president."³ On August 28, 1789, Mounier presented a project of the monarchical element of the Constitution, and a member made the following statement, the verity of which was not disputed: "Here we should reflect upon the national spirit. For fourteen centuries the French, free to direct themselves by the republican spirit, preferred the peacefulness of the monarchic government to the storms of a republican government. . . . Louis XVI. is no more upon the throne by the

¹ Chassin, *Les Elections et Cahiers*, i, 453.

² *Arch. Parl.*, viii, 350.

³ Quoted in A. Saint Girons, *Droit public français*, 129.

chance of birth, he is there by the choice of the nation; it has raised him there, as formerly our brave ancestors raised Pharamond upon the shield. No one contests the monarchical government. All the *cahiers* are certainly clear . . . we cannot avoid the conclusion, the only government which is suitable to our manners (*moeurs*), to our climate, to the extent of our provinces, is the monarchical government."¹ Other speeches made on the same occasion are indicative of the strong monarchical spirit that possessed the Assembly at this stage of its history.

Twenty days later, M. de Baron de Juigne proposed to consecrate the principles of the heredity of the crown and the inviolability of the king's person. Scarcely were these principles announced, than the Assembly proclaimed them by an unanimous movement.² These principles were embodied in the decree of September 17, 1789.³

From these citations, we are warranted in the inference that the members of the Constituent Assembly in its earlier period regarded the monarchy as the natural and the most suitable form of government for France. On the question of the division of powers, the number of chambers, the elective or hereditary kingship, the absolute or limited veto, there were differences of opinion; but national tradition and personal attachment to Louis XVI. were of sufficient force to bar any discussion of other possible forms for the executive branch.

The first strong manifestation of personal displeasure toward the king reflected in the Assembly, was aroused by his attempt to escape from the country with the royal family, on June 20 and 21, 1791. Fearing to be held longer as a hostage by the revolutionary party and to be supplanted by the invading *émigrés*, the king with his family sought to reach the eastern frontier and there to be free to act independently of both factions; but at Varennes he was arrested and brought back to face the enraged Parisians. It is then that words of displeasure were first heard in the Assembly. What shall be done with the royal fugitive? was then the living question. Some contended that he was inviolable and could not be called to account; others, that his inviolability extended only to public actions, not to private; while still others

¹ *Arch. Parl.*, viii, 505.

² *Ibid.*, 642.

³ *Ibid.*, ix, 26.

maintained that he had, by his treason, forfeited his inviolability. The agitation which reigned without found some expression within the Assembly. A committee reported, July 13, that the flight of the king was not a constitutional offense, that the principle of inviolability did not permit Louis XVI. to be put on trial. For three days the discussion over the king's inviolability was carried on. Pétion, Putraink, Vadier, Robespierre, Prieur, Grégoire, Buzot spoke against, and Larocheftoucault, Liancourt, Prugnon, Duport, Goupil de Prefeln, Salles and Barnave for the inviolability. Only Condorcet attempted to show the fitness of France for a Republic.¹ The people were astir without; they met on the squares, in the public places, crowded around the Assembly, and urged the dethronement of the king or the reference of the question to the people of the eighty-three departments. Petitions, posters, and ardent declamations were instruments by which the radicals sought to turn public opinion their way.² On July 16, 1791, a decree of the Assembly defined the acts whereby the king should be considered as no longer inviolable. Should he, having taken the oath to the Constitution, violate it; or should he put himself at the head of an army against the nation, or should he fail to oppose such an act on the part of his generals, he should be considered to have abdicated, and might be brought to trial like any ordinary citizen. His executive functions, suspended June 25, were not to be restored till the completion of the Constitution.³

The Constitution was completed and reviewed, and on September 14, 1791, the king went to the Constituent Assembly, accepted the Constitution, and, amid prolonged applause, subscribed to this new instrument that was to give liberty to France. He was escorted back to the Tuilleries by the entire Assembly. The flight of the monarch seemed forgotten or forgiven.⁴

On September 30th, the monarch made the closing speech to the Assembly and was greeted with repeated shouts of *Vive le Roi*. The President responded to the royal speech by an eulogy upon the monarch and a compliment upon the form of government in-

¹ *Arch. Parl.*, xxviii, 336-338.

² *Hist. Parl.*, x, 449 *et seq.*, and xi, 20 *et seq.*

³ *Arch. Parl.*, xxviii, 377.

⁴ *Ibid.*, xxx, 635, 636.

augurated under the Constitution.¹ Though the Constituent Assembly had not laid sacrilegious hands upon the time-honored monarchy of France further than to divest it of some of its privileges and prerogatives, though the storm of displeasure, incurred by the ill-advised flight of June 20th, had apparently subsided and the Assembly and the king had exchanged expressions of mutual esteem, and had sworn to preserve the great document so laboriously wrought out by the French Lycurguses, yet the leaven had been engendered which, under favorable circumstances, would leaven the whole lump and transform the limited monarchy into a republic. Ideas have their origin in individual minds, are advocated by these individuals, and by and by the nucleus of devotees has grown into a party that serves as an organ of propagation and makes use of the instrumentalities of their age for the dissemination of their views and for the moulding of public opinion into conformity thereto. If the conditions are favorable, the new ideas secure acceptance and are embodied in institutions; but if the conditions are hostile, the conceptions are rejected and relegated to that vast repository where are accumulated the world's Utopias; thence some ardent soul may bring forward the idea at a time which is propitious, and the Utopia may become a practical reality. It is our task to endeavor to discover the notion of a republic for France as it was conceived and promulgated by those individuals who may be called the precursors of French republicanism, to trace the formation of an organic body for its promulgation, and to find the means used in the formation of a public opinion sufficiently strong to secure the adoption of the Republic of 1792.

There were already in 1789 a few ardent natures enthusiastic over the transformation to be wrought in France, who harbored a vague desire to see the monarchy abolished and a more liberal government instituted. Whence had come this hazy notion which wrought up their feelings may only be conjectured. Perhaps the

¹ "Convaincue que le gouvernement qui convient le mieux aux prérogatives respectables du trône avec les droits inaliénables du peuple, elle a donné à l'État une constitution qui garantit également et la royauté et la liberté nationale. . . . Et vous, Sire, déjà vous avez presque tout fait. Votre Majesté a fini la Révolution par Son acceptation si loyale et si franche de la Constitution. Elle a porté au dehors le découragement, ramené au dedans la confiance, rétabli par elle le principal nerf du gouvernement et préparé l'utile activité de l'administration." *Arch. Parl.*, xxxi 688, 689.

classic studies upon which the Jesuits and Oratorians nourished their pupils had made them familiar with the Greek and Roman Republics.¹ Either the Social Contract, or the example of the American colonies, may have given them their republican notions.

Camille Desmoulins, an ardent, impetuous son of liberty, gave unequivocal expression of republican sentiments as early as 1789, and even asserted that the republican form of government was best suited for France.² In May, 1793, in two addresses, made in answer to Brissot, he confirms his early preference for republicanism. He said: "In the month of July, 1789, the number of Republicans in Paris did not probably exceed ten: and this it is which crowns with eternal glory those old members of the *Club of Cordeliers*, who began building the edifice of the republic with such slight materials."³ In June, 1790, he used the term Congress of the Republic of France in speaking of the Constituent Assembly, and said that only four republicans had had the courage to resist the royal budget of 25,000,000 voted upon in the Assembly. Again in the Jacobin Club, October 21, 1791, at the time when France was big with hope that the new Constitution would work, Desmoulins pointed out its imperfections and favored republican institutions. Here then was one mind already thinking of a republic

¹ It is noteworthy that the French had not followed the history of their own development. "Pendant toute la durée de la monarchie, tandis que le peuple n'apprenait presque rien les hautes classes, en général, apprenaient mal. Leur ignorance de l'histoire nationale explique pourquoi, au moment de la Révolution, on ne put se rendre un compte exact des faits sociaux et politiques que nous léguait l'ancien régime, pourquoi on détruisit pèle-mêle ce qu'il y avait de bon et de mauvais dans les institutions du passé, pourquoi, lorsqu'il s'agit de constituer une nation moderne, la nation française, on n'eut à la bouche que des exemples empruntés à l'antiquité, à Athènes, à Sparte, à Rome. Cette instruction incomplète, cette fausse éducation classique était, en somme, une médiocre préparation au métier de législateurs, si nouveau pour nos pères de la Révolution." M. Alfred Rambaud, *Histoire de la Civilisation française*, ii, 280. An English lady who was traveling in France writes in August, 1792: "Their studies are chiefly confined to Rollin and Plutarch, the deistical works of Voltaire and the visionary politics of Jean Jacques. Hence they amuse their hearers with allusions to César and Lycurgus, the Rubicon and Thermopylæ. Hence they pretend to be too enlightened for belief, and despise all governments not founded on the *contrat social* or the *profession de foi*. . . . They talk familiarly of Sparta and Lacedemon." *A Residence in France during 1792-95*, London, 1797.

² *La France Libre*, 1789, 60-61 pp.

³ Collection of Pamphlets in *Columbia Library*, 94404, Book M, 292.

and claiming that in the *Cordelier Club* there were others who, at that early period, shared his opinions. Who these were he does not say.¹ The district of the city called the Cordeliers had formed a popular society which manifested a severely critical spirit toward the monarchical and aristocratic legislation. This district clamored for liberty of the press,² and championed the political rights of passive citizens.³ It took the side of the sixty districts which kept up their popular electoral assemblies and which continued to meet in the interim of elections, as against the forty-eight sections, which convened only for elections. The ardent opposition of the Cordeliers to the Assembly and to the municipality doubtless provoked the enactment of the law which, on May 27, 1790, transformed these districts into the sections.⁴ Then forming the *Club of Cordeliers, the Society of the Rights of Man and of Citizens*, this district continued its policy of aggression upon the conservatives, until their more democratic programme became an accomplished fact. Here then was a company of men, having a common interest in extreme radicalism, meeting frequently and fanning into fuller heat by their addresses the embers of opposition. This society, anti-aristocratic, anti-monarchical, occasionally uttered republican sentiments and indulged in the word republic. They remarked the inconsistency between the principles contained in the Declaration of the Rights of Man and an hereditary monarchy, resting upon the divine right of

¹ Camille Desmoulins' *La France Libre* contained three striking utterances. "For forty years philosophy had undermined all the parts of the foundations of despotism; and as Rome before Cæsar was already enslaved by its vices, France before Necker was already freed by its intelligence," 56. In various parts of this article of 1789 he speaks of a republic as being the best suited to France. "Before the Royal Sitting I regarded Louis XVI. with admiration, for he had some virtues, as he walked not at all in the steps of his fathers, was not at all a despot, and had convoked the States-General. While in the province I read in the *gazette* his beautiful speech: 'What does it matter that my authority suffer provided my people should be happy?' We have, I said to myself, a greater king than the Trojans, the Marcus Aurelius, the Antonines, who did not at all limit their power. Personally I loved Louis XVI.; but the *monarchy was not less odious*," 60-61. "I declare then boldly for democracy," 64.

² *Hist. Parl.*, ii, 353, and iv, 295.

³ *Ibid.*, iii, 433.

⁴ *Hist. Gen.*, viii, 104.

kings.¹ On June 22, 1791, the *Club of Cordeliers* issued an address to the Assembly showing its republican proclivities, much to the displeasure of the Jacobins. They said: "We conjure you, in the name of the country, either to declare immediately that France is no more a monarchy, that it is a republic, or at least to wait until all the departments, until all the primary assemblies, have expressed their wish upon this important question, before thinking of replacing a second time the most fair Empire of the world in chains and in the limits of monarchism."² The flight of the king was the occasion that called for this expression of animosity to the monarchy and the preference for a republic. Even before the attempted escape, another newspaper had joined with Desmoulins in his strong anti-monarchical views and in the suggestion of a more suitable form of government for France. Prudhomme, the publisher of booklets and pamphlets of the liberal party previous to, and during the Revolution, had established a paper devoted to the new ideas, the *Révolutions de Paris*. The experienced publisher had discovered the practical sagacity and the sincere democratic proclivities of a young advocate from Bourdeaux, recently come to Paris, Loustallot, who had already in 1789 proved himself a good pamphleteer for the reformers. These two men began the issue of their sheet July 12, 1789. In its earlier numbers the slavery of the Frenchmen to the aristocracy was bitterly censured, but the king is not treated so much with hostility as with pity for his weakness.³ Whether Loustallot would have

¹ See Condorcet's speech on the question of the kingship, July 15, 1791. *Arch. Parl.*, xviii, 336-338.

² *Hist. Parl.*, x, 416-418. It seems to have been the Cordeliers who planned for the public signing of the petition upon the altar of the country, July 17, 1791, on the Champs de Mars. This petition prayed the Assembly to accept the abdication of the king, and to convocate a new constituent power for the trial of the guilty and for the replacing and organization of a new executive power. *Hist. Gen.*, viii, 100; *Hist. Parl.*, xi, 115. Six thousand petitioners had signed this instrument.

³ Henry Morse Stephens, *The French Revolution*, i, 96 et seq. The number of February 4, 1790, contained these words: "Il est impossible dans de pareils moments de se livrer à aucunes réflexions; il faut être tout à sentir. Nous dirons donc seulement, et du fond du cœur: Puisse cette journée étouffer la discorde qui régnait entre les citoyens, et ramener à la nation ceux qui ne vouloient pas reconnoître ses droits: Et nous, patriotes, faisons au bien de la paix tous les sacrifices qui peuvent s'allier avec la liberté, soyons dignes d'être libres, soyons dignes d'être les sujets d'un tel roi." *Rev. de Paris*, Vol. 3, No. 31. In referring to a company about to go to Ohio, the

continued to advocate liberal monarchical views had he lived,¹ we shall not venture to say; but in the spring of 1791,² the paper had changed its spirit toward the king. The issue of April 21-30 gave notice of a decree proposed to the National Assembly advocating the abolition of royalty. After citing a long list of considerations, chiefly of the evils of kings and of the inconsistency of such an institution with the *rights of man*, twenty-one articles were given proposing the abolition of royalty and the substitution of a President.³ Subsequent numbers continued to discuss favorably the abolition of the monarchy. In No. 91 a letter was printed which suggested the placing of a ballot-box in each of the churches to receive the vote of the people upon the question at issue. The writer shows himself friendly to the change. Another friend of the proposal, in a letter printed in No. 92,⁴ opposed this mode of voting, lest the monarchists should take advantage of it. Instead, he proposed that the vote should be collected *viva voce*, a list made of those voting; this list should be sent to the Assembly, yet care should be taken to keep a duplicate in order to avoid any surprise. No. 96 contained an article upon "The White Elephant," advocating, in a facetious manner, similar ideas. The same number entered into an examination of these three propositions, the first two of which it decided affirmatively, the last one

editor would dissuade them by saying: "Nous allons en jourir par une constitution plus heureusement concue que celle des États-Unis." Vol. 3, No. 32. In No. 52 of July, 1790, former kings are calumniated and Louis XVI. was praised. The last number of 1790 paid its respects to the king in laudable terms. "Louis tu as pris, comme par instinct, le parti le plus sage. Tu as cessé d'être l'oint du Seigneur, pour devenir le fils ainé de la patrie. Notre mère commune t'a confirmé dans ta place, à la tête de la grande famille. Dis n'est-il pas plus doux de présider des frères, que de foulter aux pieds des sujets?" No. 77.

¹ He died September, 1790.

² March 26—April 2.

³ I. La nation ne reconnoît pour chef suprême de l'empire que le président de son assemblée représentative et permanente. II. On ne pourra être élu président avant sa cinquantième année, ni pour plus d'un mois, ni plus d'une fois en sa vie. . . . XIX. La nation supprime, abolit et annule à jamais les titres de roi, de reine, de prince du sang royal, ces mots cesseront d'avoir un sens dans la langue française. . . . XXI. A l'imitation de la pâque des Hébreux, il sera institué une fête commémorative qui tombera le premier juin, jour de l'expulsion des Tarquins à Rome, et consacrée à célébrer l'abolition de la royauté le plus grand des fléaux dont l'espèce humaine ait été la victime. No. 90.

⁴ May 7-14, 1791.

negatively. I. Whether the elements and the principles of our Constitution are not in continual opposition to the form of our government. II. Whether every hereditary delegation is not a violation of rights and a contradiction in principles. III. Whether the illustrious citizen of Geneva is mistaken when he says that the monarchy is a government contrary to nature.

But the most venomous assault upon the king and upon royalty appeared in the number of June 18-25, which reported the king's flight. Denunciatory epithets were heaped upon the faithless monarch. "Julius Cæsar, poigniarded by the Romans; Charles I., decapitated by the English, were innocent, if we compare them to Louis XVI. . . . If the President of the National Assembly had put to vote upon the question whether we should have a republican form of government, in the *Place de Grève*, in the Garden of Tuileries and in the Palace of Orleans, France would no more be a monarchy." Such were some of the contents of this liberal Parisian paper.¹ The next issue (No. 103) found fault with the National Assembly for not dealing severely with the king, and said that, inasmuch as war would come anyway, it had better come under a republic than under a monarch or

¹ The picture which the editor gives of the feeling in Paris after the flight of Louis shows him to be an extreme radical, and that the people of the city were greatly groused by the escape. "L'opinion dominante était une antipathie pour les rois, un mépris pour la personne de Louis XVI., qui se manifestèrent jusque dans les plus petits détails. A la Grève, on fit tomber en morceaux le buste de Louis XVI., qu'éclairait la célèbre lanterne, l'effroi des ennemis de la révolution. Quand donc le peuple se fera t-il justice de tous ces rois de bronze, monuments de notre idolatrie? Rue Saint-Honoré, on exigea d'un marchand le sacrifice d'une tête de plâtre, à la ressemblance de Louis XVI.; dans un autre magasin, on se contenta de lui poser sur les yeux un bandeau de papier; les noms de *roi, reine, royale, Bourbon, Louis, cour, monsieur, frère du roi* furent effacés par tout où on les trouva écrits sur tous les tableaux et enseignes des magasins et des boutiques. Le Palais royal est aujourd'hui le Palais d'Orléans. Les couronnes peintes furent même proscribes, et le jour de la Fête-Dieu on les couvrit d'un voile sur les tapisseries où elles se trouvoient, afin de ne point souiller par leur aspect la sainteté de la procession. . . . Un piquet de cinquante lances fit des patrouilles jusque dans les Tuileries, portant pour bannière un écriteau, avec cette inscription :

Vivre libre ou mourir,
Louis XVI., s'expatriant,
N'existe plus pour nous."

No. 102.

a regent. Here also appeared an announcement of the propaganda of liberty, of which the Girondists spoke so enthusiastically a year later.¹ A few numbers later, an article censured the indifference of the people in regard to the elections for the coming Legislative Assembly, saying that upon the composition of this body would depend the safety of the republic. The Constituent Assembly is not spared criticism for making the Constitution unalterable by the Legislative Assembly.² In subsequent numbers of the autumn of 1791, the monarchical features of the Constitution were pointed out and criticised.³ Later on, the republic was mentioned less frequently, nevertheless royalty was still attacked. The issue which gave an account of the events of August 10, 1792, the determination of the Legislative Assembly to suspend the king and to call a National Convention to determine the nature of the executive office, referred to the king as "Louis XVI., whom we shall call no more the king of the French." The number following advised the members of the convention that their first work should be to dethrone the monarch, but a republic was not explicitly recommended.⁴ That this paper exer-

¹ "Il ne nous faut qu'un seul chef du pouvoir exécutif, mais un chef à temps, un chef impuissant par lui même, qui n'ait d'autorité que celle de la loi. Il est temps, il est plus que temps de frapper un grand coup : que la tête de Louis tombe ; ou bien qu'on le dédaigne, elle est assez méprisable ; que le trône et tous les pompeux hochets de la royauté soient livrés aux flammes ; que l'assemblée nationale de la monarchie fasse place au sénat de la république ; que celui-ci adresse un manifeste à tous les tyrans de l'Europe ; qu'il invite tous les peuples à la liberté ; qu'à la première hostilité d'immenses légions de nos nouveaux républicaines aillent exterminer tous les despotes, et planter je drapeau de la liberté jusque dans le fond de l'Allemagne ; nous serons libres alors, nous préviendrons la guerre qu'on vent apporter chez nous, et la France aura la gloire, inconnue jusqu'à ce jour, devoir non pas conquis l'Europe à la France, mais conquis l'univers à la liberté, en le purgeant des rois, empereurs, et tyrans de tous espècs." No. 103.

² T, 8, 606 *et seq.*

³ In No. 115, September 17-24, reference was made to the prize offered by the Jacobin Club for an Almanac to be distributed among the people teaching the advantages of the constitution, but the editor suggests that they had better offer a prize for an almanac revealing the defects of the constitution.

⁴ "Il n'est pas besoin d'examiner l'abolition de la royauté. Le voeu de la nation sans doute, est assez prononcé ; sans doute ceux-mêmes qui prétendaient que les adresses de tous les départements sur la déchéance ne suffissoient pas à l'assemblée nationale avant le 10 aout, sont à présent convaincus que les Français ne veulent ni d'un roi de leur nation, ni d'un étranger." Noting the weakness in the American

cised considerable influence in arousing hostility to the king and to the monarchy, and in suggesting a republic, seems quite reasonable, when we remember that its weekly circulation reached nearly two hundred thousand copies.¹

We have deemed it advisable to follow the *Révolutions de Paris* through to the proclamation of the republic, in order to give a connected account of the direction in which this popular publication attempted to sway public opinion. Having noted that its positive republicanism was manifest in April, two months before Louis XVI'S unsuccessful attempt at exodus, we shall endeavor to see what was the strength which this party possessed in the summer of 1791.

Bonneville's paper, *Bouche de fer*, in June, 1791, pronounced against a monarchy, a protectorate, and a regency, and urged an united declaration to the effect that they wanted no more of these.² A placard was posted at the door of the Assembly, July 1st, announcing that a society of republicans had resolved to publish a paper, *Le Républican*, for pointing out the abuses of monarchy and for enlightening the minds of the people upon republicanism. This was signed by Duchastellet.³ A few copies of this paper were published within this month.⁴ Montlosier mentions the existence of a republican party after the flight of the king,⁵ and Gouverneur Morris wrote, July 13, 1791, what confirms the same fact. Here is what he said : "This step was a very foolish one. . . . His departure changed everything, and now the general wish seems to be for a republic, which is quite in the natural order of things."⁶

constitution which made it possible for one man, Washington or Adams, to acquire too great power, the article urged that the French should imitate no country, but should work out their own plan. However, this same number told of the first meeting of the Convention and of the abolition of the monarchy.

¹ Stephens, *The French Revolution*, i, 102.

² *Hist. Parl.*, x, 414. ³ *Hist. Gtn.*, x, 449.

⁴ E. Hamel, *Hist. de Robespierre*, i, 388 *et seq.*, Paris, 1867.

⁵ Trois différentes opinions partageaient donc l'Assemblée et la France. La première, de rétablir le roi, et de maintenir la monarchie d'après les bases de la constitution; la seconde, d'abolir la royauté et d'élever une république; la troisième mitoyenne entre les deux autres, de rétablir le roi ou de placer le dauphin sur le trône, mais de l'environner d'un conseil exécutif indépendant dont les membres amovibles fussent élus par le peuple." Montlosier, *Mémoires*, t, i, 467 *et seq.*

⁶ *Diary and Letters*, i, 436.

On the eve of the convening of the Legislative Assembly, September 30, 1791, Morris wrote to Washington the following explicit observations upon the status of the republican movement: "The new Assembly, as far as can at present be determined, is deeply imbued with republican or, rather, democratic principles. The southern part of the kingdom is in the same disposition; the eastern is attached to Germany and would gladly be united to the empire; Normandy is aristocratical, and so is part of Brittany; the interior part of the kingdom is monarchal. This map is (you may rely on it) just, for it is the result of great and expensive investigation made by the Government."¹ Brissot's paper, *Patriote français*, of June 25, 1791, in analyzing the proposals then made for the executive department of the government, said: "The first opinion which has been presented to the public is decisive,—No more kings, let us be republicans,—such has been the cry of the Palais Royal, of some societies, of some writers."² Thomas Paine's letter in response to Siéyès, published in the *Patriote français*, July 11, declares the American system of government superior to every other, and closes the letter with these suggestive words: "Enfin c'est à tout l'enfer de la monarchie que j'ai déclaré la guerre."³

From these accumulated statements, we infer that about Paris, in the spring of 1791, especially after the 20th of June, there was much agitation in favor of the dethronement of Louis XVI, some for the change of the royal family, and a perceptible tendency in favor of a republic. After the acceptance of the Constitution by the king and by the Legislative Assembly, the constitutional question of the kingship is little discussed till in the summer of 1792. Then the Legislative Assembly was frightened over the defeat of the French army at Lille and at Tournay, the disastrous defeat of Biron's army at Mons, and the probable advance of the Austrian army upon Paris. The king, following the advice of Montmorin and Malouet, had sent Mallet du Pan on a mission to the German courts to secure a manifesto of intimidation against the factious Frenchmen.⁴ The *Austrian committee* was denounced boldly in the journals and in the Assembly.⁵

¹ *Diary and Letters*, i, 456 et seq.

² *Hist. Parl.*, x, 414 et seq.

³ *Ibid.*, 452.

⁴ *Ibid.*, xxv, 422 et seq.

⁵ *Hist. Gen.*, viii, 133-134; *Hist. Parl.*, xiv, 278 et seq.; Sorel, *L'Europe et la Rtv. fr.*, ii, 478.

Incited by this array of reverses, royal intrigues, and threatened invasion, the Assembly passed three decrees for the protection of the country: May 27, the deportation of the non-juring priests; May 29, the dismissal of the king's guard; June 8, the formation of a camp of 20,000 fédérés at Paris. The king opposed his veto to the first and last of these. The Girondin ministry was dismissed early in June.¹ The invasion of the Tuilleries, June 20, was the result of these aggravations. The petition presented to the Legislative Assembly by the crowd on that day does not solicit the establishment of a republic, but urges that the king should fulfill his constitutional function of protecting liberty.² The king continued to be disturbed by the people. The manifesto of the Duke of Brunswick, July 27, greatly excited the Parisians, already much aroused. Then from the sections of Paris, from administrative bodies, and from communes, addresses were sent in asking for the suspension or the dethronement of the king.³ The significant fact about this outcry for the removal of Louis is the silence about what is to supersede him. The *commune* representing the forty-eight sections of Paris, through Pétion, presented at the bar of the Assembly, August 3, a petition most vehement in its denunciation of the faithless monarch and most startling in the picture presented of the country's danger; but this *commune*, the most radical, perhaps, in France, invoked the Constitution in praying for his dethronement.⁴

The Legislative Assembly hesitated to take upon itself the work of deposition. The sections gave it till midnight of the 9th of August to decide; if at that time the dethronement had not been voted, the tocsin should sound and the *générale* should beat for the insurrection. The Assembly adjourned at 7 o'clock without deciding the question. The 10th of August the King was driven from the Tuilleries, and took refuge in the Assembly.

¹ *Hist. Parl.*, xv, 32 *et seq.*

² La liberté ne peut être suspendue; si le pouvoir exécutif n'agit point, il ne peut y avoir d'alternatives, c'est lui qui doit l'être: un seul homme ne doit point influencer la volonté de vingt-cinq millions d'hommes. Si, par égard, nous le maintenons dans son poste, c'est à condition qu'il le remplira constitutionnellement; s'il s'en écarte, il n'est plus rien pour le peuple français. *Hist. Parl.*, xv, 139.

³ *Hist. Parl.*, 324 *et seq.*

⁴ Louis XVI. invoque sans cesse la Constitution: nous l'invoquons à notre tour, et nous demandons sa déchéance. *Hist. Parl.*, xvi, 319.

Even then the legislators only suspended the King until "the National Convention should pronounce upon the measures which it believes ought to be adopted for assuring the sovereignty of the people and the reign of liberty and equality."¹

August 11, the Assembly provided for the mode of election for the members of the new Convention, and gave universal suffrage to males over 21 years. Did it ask that the delegates should be instructed to vote for the monarchy or the republic? No; but they were to be given "unlimited confidence."² M. Aulard has analyzed for us the powers given by the primary assemblies to the electoral assemblies of the Departments and by the latter to the deputies. He notes that almost universally the primary assemblies conformed to the advice to grant unlimited powers to the departmental electors. At the final election of deputies, September 2, in thirty-four Departments the electors made no allusion to what powers should be bestowed upon their representatives; in thirty-six they gave them "unlimited powers" or "unlimited confidence;" in two Departments, the Lower Pyrenees and Somme, the previous question was raised upon the powers to be given; in a single one (Charente) they gave as mandate the oath taken by the electors, "to maintain equality and liberty." In three Departments, Aisne, Eure-et-Soir, and Paris, they gave full powers with the restriction that the constitutional laws to be made shall be submitted to the ratification of the people. Thus all either "inscribed the formula prescribed by the Legislature or omitted it as useless and self-evident."

Shall there be a monarchy or a republic? What was the voice of the departments upon this question? Only one out of the eighty-three Departments expressed a clear demand upon this point. This one, that which includes Paris, asked for "the form of a republican government." In the other eighty-two the word republic was not pronounced. One Department, Jura, however, attempted to define in rather express terms the sort of government to be formed, "A temporary executive power, removable at the option of the people," but it does not use the term *republic*.³ Four Departments were pronounced against royalty,

¹ *Hist. Parl.*, xvii, 48.

² *Ibid.*, 44.

³ From some Department of Jura there is some reason to believe a political club had addressed a letter at the beginning of 1792 to the Jacobin Club in Paris, asking for the establishment of a republic. Biré, *Diary of a Citizen*, etc., i, 45.

and swore eternal hostility thereto; these were Aube, Charente-Inférieure, Jura, and Paris. No Department asked the continuance of the monarchy, and only a few primary assemblies asked this. These assemblies were in four Departments, *i. e.*, five in Allier, one in Ariége, three in the Gironde, and two in Lot-et-Garonne.

If we examine the proceedings of the Jacobin Club, we find that this society was devoted for some time to the King and to the constitution.¹ No bitter opposition to the monarch is found till after June 20, 1791. Then it was his violation of the constitution that caused his denunciation. After the two famous vetoes, a member proposed in the Club that they make use of Art. vi, Sec. 10, Chapt. 2, of the Constitution, "If the King puts himself at the head of an army and directs the forces against the nation . . . he will be considered to have abdicated royalty."² The printing of this discourse was urged on all hands. The Club frequently mentioned the calling of a convention. Its sympathy with the work of August 10 is evident,³ and its hostility to the monarchy is more pronounced from this period.⁴

A definite suggestion of the constructive scheme was made in the Club, September 7; Chabot introduced the discussion of the form of government, and referred to two kinds, (1) the federation of the departments, and (2) a National Council, which should be presided over in turn by one of the deputies of one of the portions of the empire. Chabot favored the latter.⁵ Again returning to

¹ F. A. Aulard, *La Société des Jacobins*, i, Intro., XII, XIII, Paris, 1889.

² *Ibid.*, iv, 80.

³ The club decreed August 12: "Qu'il sera fait une adresse aux Sociétés affiliées, pour leur donner une connaissance exacte des événements du 10 Août, les instruire du courage et du patriotisme qu'ont déployé dans cette journée à jamais mémorable les fédérés des quatre-vingt-trois départements, qui avec leurs frères d'armes de Paris, ont sauvé la patrie." Aulard, *La Société des Jacobins*, iv, 194, 195. August 22, an address was sent to the affiliated society pointing out what class of men should be chosen for the Convention. If they do not choose these, a new insurrection like that of August 10 may be necessary. *La Société des Jacobins*, iv, 233-235.

⁴ One of the speakers, M. Manuel, said, August 27: "Nous devons tous jurer, et y'en fais le premier le serment, à quelque poste que je me trouve placé tous mes efforts seront dirigés vers ce but important, de purger la terre de fléau de la royauté." *La Société des Jacobins*, iv, 238 *et seq.*

⁵ *Ibid.*, iv, 259 *et seq.*

the same question, September 10, Terrasson pronounced a preference for the federation, and cited Rousseau as his authority and America for a successful example.¹ Two days after, September 12, a letter was proposed and was adopted in the Jacobin Club of Paris, to be sent to the affiliated societies. In it were contained these three proposals, which may be regarded as setting forth the policy of the democratic party of Paris; the popular sanction or popular revision of all the constitutional decrees of the National Convention; the total abolition of royalty, and the penalty of death against those who proposed to re-establish it; the *republican form of government*.²

The significance of this movement on the part of the parent Jacobin Club must not be overlooked in tracing the progress of republicanism. The affiliation of well nigh a thousand societies in other parts of France with the parent society afforded a strong and thoroughly organized means for concerted political action.³ The nominees of the popular societies were nearly everywhere

¹ *Société des Jacobins*, iv, 273 *et seq.* .

² "La sanction ou la révision populaire de tous les décrets constitutionnels de la convention nationale; l'abolition absolue de la royauté et peine de mort contre ceux qui proposeraient de la rétablir; la forme d'un gouvernement républicain." *La Société des Jacobins*, iv, 281. A letter written by an English lady from Arras, September 1, 1792, contains this statement: "Mr. Thomas Paine . . . is in high repute here —his works are translated—all the Jacobins who *can read*, quote, and all who *can't*, admire him." *A Residence in France*, i, 68.

³ December 21, 1790, the Jacobin Club printed a list of 1,100 members; August 16, 1790, there were fifteen affiliated societies. These affiliations increased rapidly in the spring of 1791, so that by June 16, there were 406 affiliated and 14 corresponding societies; by June, 1793, there were a thousand affiliated clubs. Aulard, *La Société des Jacobins*, i, Intro., xxxiii—xxxix. That these clubs knew how to make use of their affiliations for political action is patent from the letter sent out among them, August 22, four days before the primary elections were held: "C'est à nous à le soutenir; et nous le pouvons, en éloignant des assemblées électorales tous ceux qui ont protégé, même indirectement la cour et le sacerdoce, les émigrés et leurs adhérents. Notre choix ne doit pas être difficile; les patriotes font la majorité de la nation. Ils peuvent donc, s'ils savent se réunis, faire des choix favorables à leurs intérêts. Les électeurs étant payés à trois livres . . . il n'est plus nécessaire d'être riche bourgeois, prêtre, ou ci-devant noble pour accepter cette noble mission; et, si la majorité des électeurs est au niveau de la révolution du 10 Août 1792 nos nouveaux députés ne tarderont pas à la consolider et à sauver le peuple par une constitution conformé à la déclaration des droits et à l'intérêt du plus grand nombre." *Société des Jacobins*, iv, 233, *et seq.*

chosen to represent the provinces in the Convention.¹ In the list of deputies from Paris appeared the names of pronounced republicans and radical Jacobins who might be expected to take a stand for a popular form of government.²

The Convention held its first meeting in the Tuileries; only 371 members were present. They verified their powers, organized by choosing Pétion as President, and by naming five Secretaries. September 21, they occupied the place of the Legislative Assembly in the Riding School. Here they had declared in favor of the following measures suitable for allaying the fears of disorder: (1) The National Convention declares that there can only be a constitution when it is accepted by the people; (2) that the security of person and of property is under the safeguard of the nation; (3) that all laws not abrogated, and all powers not revoked or suspended are maintained; (4) that the existing taxes shall be collected as in the past.

This effected, they were about to adjourn, when Collot d'Herbois ascended the tribune and said: "You have just passed a wise resolution, but there is one which you can not put off till tomorrow, which you can not put off till this evening, which you can not put off a single instant without being unfaithful to the wish of the nation; that is the abolition of royalty." Unanimous applause greeted this speech. M. Grégoire proposed that "by a solemn law they sanction the abolition of royalty," and the

¹ Stephen's *French Rev.*, ii, 154; Babeau's *Hist. de Troyes pendant la Rev.*, i, 527, 528. The following excerpt from *A Residence in France, 1792-95*, described in a series of letters from an *English Lady*, i, 93: "If the electors and elected of the other departments be of the same complexion with those of Arras, the new Assembly will not, in any respect, be preferable to the old one. I have reproached many of the people of this place, who, from their education and property, have a right to take an interest in the public affairs, with thus suffering themselves to be represented by the most desperate and worthless individuals of the town. Their defense is that they are insulted and overpowered if they attend the popular meetings, and by electing *les gueux et les scélérats pour députés*, they send them to Paris and secure their own local tranquillity.

² The twenty-four deputies from the city were Robespierre, Danton, Collot d'Herbois, Manuel, Billaud-Varenne, Camille Desmoulins, Marat, Lavicomterie, Legendre the butcher, Raffron du Trouillet, Paris, Sergent, Robert, Dusaulx, Fréron Beauvis de Preau, Fabre d'Eglantine the dramatist, Osselin, Augustine Robespierre, David the great painter, Boucher, Laignelot, Thomas, the *ci-devant* Duke of Orleans now democratically named Philippe Égalité. Stephen's *French Rev.*, ii, 155, 156.

entire Assembly by a spontaneous movement arose and voted this proclamation by acclamation; a brief discussion followed, and then with loud bursts of applause they voted, "The National Convention decrees that royalty is abolished in France." For some time the cry "*Vive la Nation*" was prolonged. At this juncture a company of 150 *chasseurs* were admitted to the hall and swore upon their arms to return only after having triumphed over all the enemies of liberty and equality. But as yet the word Republic had not been mentioned in the new Convention.

At the evening session of that day the time was consumed in hearing of the discourses of divers deputations that had come to congratulate the Convention upon the great work done that day. Two of these spoke of the Republic as an already established fact,¹ while on the streets, however, of the city the cry was resounding, "*Vive la République.*" One orator spoke of nine battalions already sent to the front, and reported that another was on the way. "They were coming," he said, "to pray your blessing upon their arms, when they learned on the way that they were to fight no more for kings. They were happy to go to save the Republic. When they were informed that all your moments must be consecrated to it, they renounced the enjoyment of receiving your blessing and went on their way. Our Department is busy forming new battalions, in seeking to arm them, and especially in inspiring them with republican manners." This was greeted with new applause. The section of Quatre-Nations was represented by its orator, who said among other things; "We have given three thousand men for the frontier; these are three thousand republicans We ask to defile through your midst. If arms are needed, speak, we shall hasten to use them in the defense of the country, too happy to pay with our blood for the Republic which you have decreed for us." Applause greeted this expression of devotion.² The newspapers signaled the decree of abolition in enthusiastic

¹ The proclamation of the abolition of the monarchy filled Paris with joy. We cite from the *Rev. de Paris*, No. 167, 534: "Cette proclamation, parvenue dans les 48 sections de Paris, fut répétée dans tous les carrefours au bruit des cors et au milieu des applaudissements universelles. Tous les citoyens à l'envi illuminèrent le devant de leurs maisons, comme à l'occasion d'un grande victoire remportée sur le plus puissant de nos ennemis."

² *Hist. Parl.*, xix, 6 et seq.

descriptions, but only Brissot's *Patriote français* proclaimed, " Royalty is abolished ; France is a Republic."¹

On the morrow early in the session, Billaud-Varenne moved, and the Convention decreed, that "all public acts were to be dated from the first year of the Republic." A new seal of State bearing the words "*République de France*" was decided upon and national colors were proposed, but not adopted.² The journals took little notice of this new name with which France had been baptized. Nevertheless, the members of the Convention seemed to take it as a matter of course and to make repeated use of the term Republic. For instance, on September 22, it appeared in the following decree: "The National Convention decrees that the committees of the legislative assembly and the members of the executive council shall render an account to the National Convention of the state of their work and of the condition of the different parts of the French Republic" The report of the Minister of the Interior, M. Gorsas, in the session of September 23, contained this report of the state of public opinion: "The will of the French is pronounced. Liberty and equality are their supreme good; they will sacrifice all to preserve these. They have a horror for the crimes of the nobles, the hypocrisy of the priests, the tyranny of kings. Kings! they wish no more of them, they know that outside of a Republic there is no liberty." Again on September 24, the Convention decreed "that there shall be named six commissioners charged with rendering as full an account as shall be possible, of the present state of the *Republic* and that of Paris." On September 25, the Convention declared "the French Republic is one and indivisible."³

Here we have passed to the period in which the Republic had become an accepted fact for France. Robespierre said truly that it had "glided in furtively among the factions," and we may say that to Frenchmen, interested in the national defence, it was a welcome change. Gouverneur Morris is authority for this in a note of October, 1792, in which he said: "These are the outlines made use of on either side to convince the public that each is ex-

¹ *Hist. Parl.*, xix, 20, 21.

² Biré, *Diary of a Citizen*, i, 14; Aulard, *Études et Leçons sur la Rev. fr.*, 109 *et seq.*

³ *Hist. Parl.*, xix, 35, 39, 105.

clusively the author of a Republic which the people find themselves possessed of by a kind of magic, or at least, a sleight of hand, and which, nevertheless, they are as fond of as if it were their own offspring."¹

It would be interesting to know how completely this Parisian enthusiasm was shared by the nation. Grave objections may have been offered, but it soon came about that to be disloyal to the Republic was to be a foe of liberty and equality, and, worse yet, a traitor to France. So far as we are able to discover, the army accepted the Republic with enthusiasm. On September 9, General Valence wrote to Dumouriez that *he would run to the Republic with transport*. Prieur (de la Marne) awakened enthusiasm in the army of the Ardennes by announcing to them on September 29, the news of the birth of the Republic.² And a report from the camp of volunteers at Châlons speaks of a like worthy sentiment.³

These are the facts about the growth of republican ideas in Revolutionary France and of the proclamation of the Republic. We can sum them up as follows: At the meeting of the States-General in 1789 France was pronouncedly monarchic. A little coterie of men became anti-monarchical; these developed the Club of Cordeliers. In 1791, when Louis XVI showed his distrust of the French people and tried to escape, hostility to the monarch and also to the monarchy was strong. Even republicanism was championed by an orator in the Assembly and by a few newspapers; one of these journals, the *Révolutions de Paris*, had a large circulation. The king however accepted the Constitution in September, 1791, and the outcry against him and in favor of the abolition of the monarchy subsided. Not until in the summer of 1792 did the royal vetoes, the menacing manifesto of the allies, the actual advance of the Prussian army toward Paris, call forth many petitions and requests for the suspension or for the dethronement of the king, or for the abolition of the monarchy.

Comparatively little was said, however, about the form to be given to the executive. On August 10, the Legislative

¹ *Diary and Letters*, i, 596.

² Aulard, *Études et Leçons*.

³ *Révolutions de Paris*, ii, 68-76.

Assembly only "suspended Louis XVI provisionally, until the National Convention should pronounce upon the measures it believed ought to be adopted for assuring the sovereignty of the people and the reign of liberty and equality." Clubs, sections, journals, and provinces, and even radical democrats, are rather silent about a substitute for the monarchy. When the abolition came on September 21, it was received as the news of a national victory; but at first the term Republic, used on the 22nd, was little greeted by the nation. It however became the shibboleth of the army and of the patriots. For this revival of republicanism, Paris, and perhaps the army, are responsible. The Jacobin Club of Paris also made use of its influential position to encourage republican inclinations in the affiliated societies throughout France, and, what was more important still, to secure the election of anti-monarchical and of democratic deputies to the Convention.

A few questions remain to be answered. First among these is, What was the relation between the republican movement of 1791 and that of 1792? The earlier movement must have had a tendency to increase the number in France who perceived the inconsistency between individual rights and the equality of men on the one hand, and the hereditary kingship on the other. It also increased the number of those who believed a republic suited for France and who, though they recognized that the realization of their opinions was for the time being impossible, yet were ready to strive for its establishment when the circumstances should give opportunity. To this group of men belongs the credit of having secured an expression from Paris in favor of the Republic, and of having secured its early recognition in the city on the abolition of royalty.

A second question is, Why was there so much said in 1792 about the abolition of monarchy, and so little about the Republic that should replace it? Why were those of republican preferences so slow to say it? This may be answered by the statement that generally, in movements depending upon public opinion, the people are more pronounced against an abuse or misuse which they have experienced than about an untried theory; are more capable to pronounce upon a destructive than upon a constructive scheme, are more enlightened in their negative than in their positive actions. The Constituent Assembly was happy in its negative work of destroying the abuses of the old régime, but less

felicitous in its positive work of reconstruction. The French people of 1792 were conversant with the vacillations of the king, the treasonable intrigues and anti-popular feelings of the court, but a Republic was as yet an untried and unproved expedient. Under its name anarchy, or, what to the Parisians was little less odious, *federalism*, might become the order of the day. Hence the very friends of a strong united Republic hesitated to use the word till the form of the institution should be shaped by the tendency of affairs. The very friends of Republican government might have remembered that their use of the word Republic in 1791 had been fraught with bitter schismatic tendencies among the friends of the Revolution; and how much more dangerous such a schism in 1792, when the nation found itself called upon to resist the humiliating invasion of its territory by the allies. They also knew that to be a republican in 1791 had been unpopular,¹ and were chary of exposing themselves to unnecessary odium, knowing that the monarchy once abolished, they would be by necessity under a liberal form of government, call it what they might.

A third query is, Why did the Conventionists choose the republican government? The question is easily answered by another question, *i. e.*, What other expedient was possible, considering the state of public opinion? Was it an aristocracy? But the Revolution in its incipient stages was a revolt against an aristocracy. Was it a regency? But here the difficulty was to find a regent who did not share the obloquy of the dethroned monarch, or was not incapable of commanding the respect of the nation. Was it under the protection of a foreign prince or power? Not so; the spirit of national independence was too strong to suffer even a dispassionate consideration of this. What way could the Constitutionalists turn? Sorel has truly said: "The abolition of royalty was the acknowledgment of a fact; the proclamation of the Republic was the recognition of a necessity. A government was necessary to France, and no other than a republican government was possible."² And the Republic had existed in

¹ See Siéyès disavowal, *Hist. Parl.*, x, 451. Brissot's *Journal* of Sept. 21, 1791, said: "Qui ne se rappellera pas avec quelque douleur, que le mot de république était alors presque proscrit aux Jacobins même; qu'il fallait prendre des tournures oratoires pour justifier le républicanisme." *Hist. Parl.*, xix, 20, 21.

² *L'Europe et la Rev. fr.*, iii, 67.

fact in France for two short, but very critical periods. From June 21 to September 14, 1791, the king had been suspended and the Constituent Assembly had conducted through the ministry the work of the executive. And again from August 10 to September 21, 1792, the same expedient was resorted to. But it may be said that the Republic was not in accord with French national traditions, and that, therefore, it could never be accepted by the nation. True, France had been a monarchy for centuries, and the history of her kings was dear to the people in 1789; but there was a stronger tradition to which the people were more devotedly attached than to royalty, and now the king had forced the issue between these two traditions, that is, the tradition of the monarchy and the tradition of nationality and independence. So soon as it seemed clear that the French must choose between these, the choice was made by the abolition of royalty.

Royalty was thus abolished on September 21, 1792: the republic was recognized by the Convention as its legitimate successor. The name had been adopted, now a new constitution was necessary; not one like that of 1791, a base accommodation of hereditary powers and democratic rights; but one consistently constructed. The Convention early appointed its Committee of Constitution. The leader in the committee was Condorcet, and the majority were Girondists. Their work was ready to be reported February 15 and 16, 1793. But by this time the republicans themselves had formed two antagonistic factions, the Girondists and the Montagnards. The latter were the men of action, and now held the power in the Convention. Condorcet's Constitution was not submitted to the nation.

On May 30, 1793, the Committee of Public Safety was augmented by five members. These were Couthon, Herault de Séchelles, Mathieu, Ramel, and Saint Just. They lost no time in the elaboration of a Constitution, and by June 22, were ready to report. Herault de Séchelles made the final reading June 24. Delegates were sent all over France to receive the vote of the primary assemblies for the acceptance of the Constitutional Act; 1,801,918 votes were cast for its adoption. Their glowing report was made August 9th by Gossuin, and the next day was fixed as a national festival "consecrated to the inauguration of the Constitution of the Republic." The artist, David, planned the ceremonies.

The glorious fundamental law was not, however, to reign in France. France must be defended from invasion, civil war must be subdued, and then the rest of Europe must be delivered from political slavery. In just two months after this inaugural festival, the Convention decreed that the provisional government should be revolutionary till peace. When peace came, a new monarch was enthroned. But these enthusiastic men of 1792 and 1793 had given France a name and an ideal; they had placed above her horizon a star of hope. When oppression shall make them weary, or when the popular spirits shall rise, they shall think of a republic as the aim and end of political effort.

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